STATE LAW LIBRARY
DEC 14 1979
OF MONTANA

REVISED CODES OF MONTANA

VOLUME 5

Part 2

1977 Cumulative Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 5 (PART 2) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 5 (PART 2) THROUGH VOLUME 557, PACIFIC REPORTER (2ND SERIES)

Edited by

THE PUBLISHERS' EDITORIAL STAFF

THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202

Copyright © 1967, 1971, 1973, 1974, 1976 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

Copyright © 1977 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

NEW LAWS IN VOLUME 5 (Part 2)

For index see supplement to Replacement Volume 9

ENACTED IN 1967

Banks with offices in more than one county, assessment, 84-4606.
Corporate tax liens, release, 84-1505.1.
Extraordinary levies, 84-4701.6.
Jeopardy assessments, income tax, 84-4928.1.
Mobile homes, registration when out-of-state, 84-6606, 84-6607.
Public contractors, withholding tax from payments, 84-3513 to 84-3516.
University support, increase of tax levy, 84-3804.

ENACTED IN 1969

Cigarette tax, 84-5606.2 to 84-5606.31.
Income tax surtax, 84-4902.1.
License taxes,
Corporations, 84-1501.5, 84-1505.2.
Gasoline, 84-1845 to 84-1847, 84-1849 to 84-1861.
Special fuel, 84-1832.1.
Multistate Tax Compact, 84-6701 to 84-6704.
Privilege tax on possession or use of tax-exempt property, 84-207 to 84-210.
Tobacco tax (cigarettes excluded), 84-6801 to 84-6807.

ENACTED IN 1971

Aviation gasoline, unlawful use, 84-1855.1.
Banks subject to corporation license tax, 84-1501.6, 84-1501.7.
Corporation income tax, 84-6901 to 84-6908.

ENACTED IN 1973

Agricultural land, valuation for tax purposes, 84-437.1 to 84-437.6, 84-437.8 to 84-437.14.
Appeal of assessments to state tax appeal board, 84-802.1, 84-903.1.
Assessment book, form, 84-502.1.
Corporations, identification and listing for tax purposes, 84-708.2 to 84-708.8.
Department of revenue functions, 84-708.1.
Grade crossing protection, allocation of funds for, 84-1840.1.
Judicial review of state tax appeal board decisions, 84-709.1.
Resource indemnity trust account, 84-7001 to 84-7013.
Sewer charges of municipalities, assessment and collection, 84-4726.1.

ENACTED IN 1974

Custom combiner's tax, 84-6015.
Deduction for political contributions, 84-4906.1, 84-4906.2.
Property Taxpayers Information Act, 84-7201 to 84-7208.
Reclassification of agricultural land, 84-437.15, 84-437.16.
State debt collection service, 84-7101 to 84-7111.
Valuation of agricultural land, refund of late filing fee, 84-437.17.

ENACTED IN 1975

Airline flight property tax hearing, 84-6405.1.
Cement dealers' license tax, collection procedure, 84-1108.1.
Coal mines license tax, 84-1312 to 84-1325.
Coal retailers' license tax, collection procedure, 84-1408.1.
Corporate License Tax Credit Act, 84-1519, 84-1520, 84-1523 to 84-1525.

NEW LAWS IN VOLUME 5 (Part 2) (Continued)

Department of revenue,
Audit by department of taxable value, 84-708.9, 84-708.10.
Interlocutory adjudication, procedure and jurisdiction, 84-709.2, 84-709.3.

Economic Land Development Act, 84-7501 to 84-7526.

Energy conservation and alternative energy sources,
Incentive programs for use, 84-7401 to 84-7406.
Research development, 84-7407 to 84-7413.

Income tax, military exemption, 84-4907.2.

Livestock tax, owner's duty to assist in assessment, 84-5201.1, 84-5201.2.

Metalliferous mines, license tax collection procedure, 84-2008.1.

Oil producers' license tax collection procedure, 84-2209.1.

Prepayment of taxes, new industrial facilities, 84-41-105.

Prorated taxes on aircraft, 84-4218.

Realty Transfer Act, 84-7301 to 84-7311.

Revaluation of taxable property, 84-429.14 to 84-429.17.

Uncollectible taxes stricken from record, 84-4175.1, 84-4175.2.

Unsold tax deed lands, classification, board establishment, 84-4190.1, 84-4190.2, 84-4192.1, 84-4192.2.

Vehicles using liquid petroleum gases taxed, 84-1862 to 84-1865.

ENACTED IN 1977

Appeals to state board of tax appeals, 84-709.4.

Business inventories, property tax assessment, 84-422.1 to 84-422.3.

Cement and gypsum producers' license tax, collection, 84-1213.

Central assessment of utility and carrier property, 84-7801 to 84-7807.

Classification of property, 84-301.1 to 84-301.21.

Collection of license taxes, 84-7701 to 84-7703.

Community services buildings exempted from property tax, 84-202.1.

Corporate income tax, closing agreements, 84-6909.

Corporate license tax closing agreements, 84-1526.

Definition of "person," 84-102.

Economic land development, 84-7502.1 to 84-7520.1.

Electrical energy producers' license tax, collection, 84-1610, 84-1611.

Energy, alternative sources incentive program, 84-7403.1, 84-7414, 84-7415.

Income tax,
Closing agreements, 84-4959.
Deduction for handicapped children, 84-4910.1, 84-4910.2.
Investment credit, 84-4960, 84-4961.

Limitation of appraisal and levy, 84-309, 84-310.

Livestock tax, 84-5201.3 to 84-5201.6, 84-5222.

Metal mines,
Gross proceeds tax, 84-7901 to 84-7907.
Property tax exemption, 84-212.

Natural gas exempted from oil producers license and net proceeds taxes, 84-2212, 84-2213.

New taxing jurisdictions, levy and computation of tax, 84-3811.

Vehicles using liquefied petroleum gases taxed, 84-1862.1.

AMENDMENTS IN VOLUME 5 (Part 2)

Airline flight property tax, 84-6401, 84-6403, 84-6404.

Assessment book, records, maps and list, 84-501, 84-504 to 84-511.

Assessment of property for taxation, 84-401 to 84-406, 84-409 to 84-415, 84-427 to 84-429, 84-429.7, 84-429.9, 84-429.11, 84-429.12, 84-437.2, 84-437.3, 84-437.5, 84-437.6, 84-439, 84-441, 84-448 to 84-452.
Department of revenue, assessments made by, 84-723.
Utility and carriers returns and reports, 84-7803.

Bank shares, moneys and credits, taxation, 84-4604 to 84-4606.

Building and loan or savings and loan associations tax, 84-7601.

Canals, ditches and flumes, assessment, 84-901 to 84-907.

Cement and gypsum producers' license tax, 84-1202, 84-1204 to 84-1207, 84-1209.

Cement dealers' license tax, 84-1102 to 84-1106, 84-1108.

AMENDMENTS IN VOLUME 5 (Part 2) (Continued)

Cigarette tax, 84-5606, 84-5606.2 to 84-5606.6, 84-5606.8, 84-5606.9, 84-5606.13 to 84-5606.18, 84-5606.20 to 84-5606.31.
Classification of property and basis for imposition of tax, 84-301.16, 84-307, 84-308.
Coal mines license tax, 84-1313, 84-1314, 84-1319, 84-1320.
Coal retailers' license tax, 84-1402 to 84-1406, 84-1408, 84-1417.
Collection of property taxes, 84-4101, 84-4116, 84-4130, 84-4155, 84-4166, 84-4169, 84-4191, 84-4192, 84-41-100, 84-4201, 84-4202, 84-4209, 84-4211, 84-4216, 84-4218.

Computation and extension of property tax, 84-4001 to 84-4006, 84-4013.
Corporation income tax, 84-6902, 84-6903, 84-6907.
Corporation license tax, 84-1501 to 84-1501.2, 84-1502 to 84-1505.2, 84-1507 to 84-1508.2, 84-1509, 84-1512, 84-1514 to 84-1518.

County tax appeal board, 84-601.

Definition of terms, 84-101.

Department of revenue,
Hearings and investigations by department, 84-714 to 84-716.
Powers and duties, 84-708.1, 84-708.9.
Records and certificates, 84-724, 84-732 to 84-734.

Deposit and distribution of proceeds of state taxes, 84-1901.
Electrical energy producers' license tax, 84-1601 to 84-1605, 84-1608.
Electric power and transmission lines, assessment, 84-901 to 84-907.
Energy conservation and alternative energy sources, 84-7401, 84-7403.
Equalization of taxes, 84-601 to 84-610, 84-711, 84-712.
Appeal of changes by department, 84-4503.

Exemptions from property tax, 84-202.
Express company license tax, 84-1702, 84-1703, 84-1707.
Federal payments in lieu of taxes, 84-5501, 84-5502.
Fines and forfeitures for tax violations, disposition, 84-515.
Freight line company gross earnings tax, 84-4818 to 84-4822, 84-4824.
Gasoline distributors' license tax, 84-1831, 84-1832.1, 84-1840, 84-1842, 84-1843, 84-1846, 84-1847, 84-1849 to 84-1855, 84-1857, 84-1858, 84-1861.

House trailer property tax, 84-6601, 84-6604 to 84-6608.
Income tax, 84-4901 to 84-4902.1, 84-4903, 84-4903.2, 84-4903.5 to 84-4903.11, 84-4905, 84-4906, 84-4907, 84-4907.1, 84-4908, 84-4910, 84-4913, 84-4914, 84-4919 to 84-4920.1, 84-4921, 84-4922, 84-4923.1, 84-4924, 84-4926, 84-4928, 84-4928.1, 84-4929 to 84-4931, 84-4937 to 84-4940, 84-4942, 84-4943, 84-4946, 84-4948, 84-4950, 84-4951, 84-4955, 84-4956, 84-4958.

Initiative No. 54, 84-5606.
Insurance company property tax, 84-5103.
Interstate fleets, taxation, 84-727 to 84-730.
Laundry license tax, 84-3206.
Livestock tax, 84-5201.1, 84-5208, 84-5210 to 84-5212, 84-5214 to 84-5216, 84-6008, 84-6010 to 84-6015.

Metalliferous mines license tax, 84-2002 to 84-2010, 84-2013, 84-2016.
Micaceous mineral mine license tax, 84-5902 to 84-5907.
Mines, net proceeds tax, 84-5402, 84-5403, 84-5405 to 84-5407, 84-5409, 84-5412, 84-5413, 84-5415.

Multistate Tax Compact, 84-6701 to 84-6704.
Municipal tax levies, 84-4701 to 84-4701.3, 84-4701.5, 84-4701.6, 84-4713, 84-4715 to 84-4721.
Oil or gas well net proceeds tax, 84-6201 to 84-6206, 84-6208, 84-6211 to 84-6213.
Oil producers' license tax, 84-2202 to 84-2207, 84-2209, 84-2209.1.
Pipelines, assessment, 84-901 to 84-907.
Privilege tax on possession and use of tax exempt property, 84-207.
Production credit association tax. 84-5801.
Property subject to taxation, 84-201.
Property taxpayers' information, notice of millage increase, 84-7204.
Protest payment of taxes and action for recovery, 84-4502.
Public contractors' license tax, 84-3501 to 84-3503, 84-3505, 84-3507, 84-3508, 84-3510, 84-3512, 84-3513, 84-3515, 84-3516.

Railroads, assessment, 84-801, 84-802.
Resource indemnity trust account, 84-7003, 84-7006, 84-7012.
Sleeping car company license tax, 84-2301 to 84-2306.
Special fuel tax, 84-1831 to 84-1832.1, 84-1833 to 84-1838, 84-1840, 84-1841 to 84-1844.
State debt collection service, 84-7104 to 84-7107.
State tax appeal board, 84-701 to 84-706, 84-708, 84-709, 84-709.1, 84-717.
State tax levy on property, 84-3803, 84-3804, 84-3806, 84-3808, 84-3809.

Store license tax, 84-2401 to 84-2405, 84-2407, 84-2410 to 84-2412.
Suspense account and tax refunds, 84-725, 84-726.
Telegraph and telephone lines, assessment, 84-901, 84-902, 84-905.
Telephone company license tax, 84-2601 to 84-2603, 84-2605.
Tobacco tax, 84-6801, 84-6806, 84-6807.
United States property held under contract or lease, taxation, 84-6102, 84-6103.
Vehicles using liquefied petroleum gases taxed, 84-1862, 84-1863.

MONTANA REVISED CODES

TITLE 84—TAXATION

Chapter

1. Definition of terms, 84-101, 84-102.
2. Property subject to taxation—basis for taxation, 84-201 to 84-202.1, 84-207 to 84-210, 84-212.
3. Classification of property for taxation—basis for taxation, 84-301.1 to 84-301.21, 84-307 to 84-310.
4. Assessment of property—powers, duties and liability of county assessor, 84-401 to 84-406, 84-409 to 84-415, 84-422.1 to 84-422.3, 84-427 to 84-429, 84-429.7, 84-429.9, 84-429.11, 84-429.12, 84-429.14 to 84-429.17, 84-437.1 to 84-437.6, 84-437.8 to 84-437.17, 84-439, 84-441, 84-448 to 84-452.
5. Assessment book—form—contents—disposal, 84-501, 84-502.1, 84-504 to 84-511, 84-515.
6. Equalization of taxes and county tax appeal board, 84-601, 84-603 to 84-608, 84-610.
7. State department of revenue and tax appeal board, 84-701 to 84-706, 84-708 to 84-708.10, 84-709 to 84-709.4, 84-711, 84-712, 84-714 to 84-717, 84-723 to 84-730, 84-732 to 84-734.
8. Railroads operating in more than one county—assessment franchise, etc. by state department of revenue, 84-801, 84-802.
9. Telegraph, telephone, electric power and other lines—assessment by state department of revenue, 84-901, 84-902, 84-905.
10. License taxes—carbon black producers, Repealed—Section 1, Chapter 370, Laws of 1973.
11. License taxes—cement dealers, 84-1102 to 84-1106, 84-1108, 84-1108.1.
12. License taxes—cement and gypsum producers, 84-1202, 84-1204 to 84-1207, 84-1209, 84-1213.
13. License taxes—coal mines, 84-1312 to 84-1325.
14. **License taxes—coal retailers, 84-1402 to 84-1406, 84-1408, 84-1408.1, 84-1417.**
15. License taxes—corporation license tax, 84-1501 to 84-1501.2, 84-1501.5 to 84-1501.7, 84-1502 to 84-1505.2, 84-1507 to 84-1508.2, 84-1509, 84-1512, 84-1514 to 84-1520, 84-1523 to 84-1526.
16. License taxes—electrical energy producers, 84-1601 to 84-1605, 84-1608, 84-1610, 84-1611.
17. License taxes—express companies, 84-1702, 84-1703, 84-1707.
18. License taxes—gasoline dealers and distributors—special fuel tax, 84-1831 to 84-1832.1, 84-1833 to 84-1838, 84-1840, 84-1840.1, 84-1841 to 84-1847, 84-1849 to 84-1855.1, 84-1856 to 84-1865.
19. License and other tax proceeds—how disposed of, 84-1901.
20. License taxes—metalliferous mines, 84-2002 to 84-2010, 84-2013, 84-2016.
21. License taxes—natural gas distributors, Repealed—Section 7, Chapter 245, Laws of 1975.
22. License taxes—oil producers, 84-2202 to 84-2207, 84-2209, 84-2209.1, 84-2212, 84-2213.
23. License taxes—sleeping car companies, 84-2301 to 84-2306.
24. License taxes—store license, 84-2401 to 84-2405, 84-2407, 84-2410 to 84-2412.
25. License taxes—telegraph companies, Repealed—Section 5, Chapter 36, Laws of 1977; Section 1, Chapter 40, Laws of 1977.
26. License taxes—telephone companies, 84-2601 to 84-2603, 84-2605.
32. Licenses—miscellaneous—county, 84-3206.
35. Licenses—public contractors, 84-3501 to 84-3503, 84-3505, 84-3507, 84-3508, 84-3510, 84-3512 to 84-3516.
38. Levy of taxes, 84-3803, 84-3804, 84-3806, 84-3808, 84-3809, 84-3811.
39. Uniform Federal Tax Lien Registration Act, Repealed—Section 8, Chapter 228, Laws of 1967.
40. **Computation and entry of taxes, 84-4001 to 84-4006, 84-4013.**
41. Collection of general property taxes—tax sales—redemption—tax deeds—sale of tax deed lands, 84-4101, 84-4116, 84-4130, 84-4155, 84-4166, 84-4169, 84-4175.1, 84-4175.2, 84-4190.1, 84-4190.2, 84-4191 to 84-4192.2, 84-41-100, 84-41-105.

42. Collection of personal property taxes not a lien on real estate—road and poor taxes, 84-4201, 84-4202, 84-4209, 84-4211, 84-4216, 84-4218.
45. Protest payment of taxes—action to recover, 84-4502, 84-4503.
46. Banks—taxation, 84-4604 to 84-4606.
47. Cities and towns—taxation and license, 84-4701 to 84-4701.3, 84-4701.5, 84-4701.6, 84-4713, 84-4715 to 84-4721, 84-4726.1.
48. Freight line companies—taxation, 84-4818 to 84-4822, 84-4824.
49. Income tax, 84-4901 to 84-4903, 84-4903.2, 84-4903.5 to 84-4903.11, 84-4905 to 84-4907.2, 84-4908, 84-4910 to 84-4910.2, 84-4913, 84-4914, 84-4919 to 84-4920.1, 84-4921, 84-4922, 84-4923.1, 84-4924, 84-4926, 84-4928, 84-4928.1, 84-4929 to 84-4931, 84-4937 to 84-4940, 84-4942, 84-4943, 84-4946, 84-4948, 84-4950, 84-4951, 84-4955, 84-4956, 84-4958 to 84-4961.
51. Insurance companies general property tax, 84-5103.
52. Livestock taxation, 84-5201.1 to 84-5201.6, 84-5208, 84-5210 to 84-5212, 84-5214 to 84-5216, 84-5222.
54. Mines taxation—general property and net proceeds tax, 84-5402, 84-5403, 84-5405 to 84-5407, 84-5409, 84-5412, 84-5413, 84-5415.
55. Lieu taxes on resettlement projects—requests for United States payment of, 84-5501, 84-5502.
56. Cigarette tax—licenses—stamps, 84-5606, 84-5606.2 to 84-5606.31.
58. Production credit associations—taxation, 84-5801.
59. Micaceous mineral mines—license taxes, 84-5902 to 84-5907.
60. Migratory personal property—taxation, 84-6008, 84-6010 to 84-6015.
61. United States property—taxation, 84-6102, 84-6103.
62. Mines or wells producing natural gas or petroleum—net proceeds tax, 84-6201 to 84-6206, 84-6208, 84-6211 to 84-6213.
63. Importers tax on gasoline purchased outside state and used in state, Repealed—Section 8, Chapter 34, Laws of 1977; Section 1, Chapter 375, Laws of 1977.
64. Flight property of airline companies—assessment and taxation, 84-6401, 84-6403, 84-6404.
65. License taxes—racing associations, Repealed—Section 15, Chapter 196, Laws of 1965; Section 6, Chapter 216, Laws of 1967.
66. Property tax on house trailers, 84-6601, 84-6604 to 84-6608.
67. Multistate tax compact, 84-6701 to 84-6704.
68. Tobacco tax (cigarettes excluded), 84-6801 to 84-6807.
69. Corporation income tax, 84-6901 to 84-6909.
70. Resource indemnity trust account, 84-7001 to 84-7013.
71. State debt collection service, 84-7101 to 84-7111.
72. Property Taxpayers Information Act, 84-7201 to 84-7208.
73. Realty Transfer Act, 84-7301 to 84-7311.
74. Energy conservation and alternative energy sources—incentive programs, 84-7401 to 84-7403.1, 84-7404 to 84-7415.
75. Economic Land Development Act, 84-7501, 84-7502.1, 84-7503.1, 84-7504.1, 84-7505.1, 84-7508.1, 84-7509.1, 84-7510.1, 84-7511.1, 84-7512.1, 84-7513.1, 84-7514.1, 84-7515.1, 84-7516.1, 84-7517.1, 84-7518.1, 84-7519.1, 84-7520.1.
76. Building and loan or savings and loan associations—taxation, 84-7601.
77. Collection procedure for license taxes on express, freight line, sleeping car, telegraph, and telephone companies, 84-7701 to 84-7703.
78. Centralized assessments of railroads, utilities, airlines, mines, and oil and gas wells, 84-7801 to 84-7807.
79. Metal mines—ad valorem taxation of gross proceeds, 84-7901 to 84-7907.

CHAPTER 1—DEFINITION OF TERMS

Section
84-101. Definition of terms.
84-102. "Person" defined.

84-101. (1996) **Definition of terms.** When terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(1) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things real, personal, and mixed capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation

when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(2) The term "real estate" includes:

(a) the possession of, claim to, ownership of, or right to the possession of land;

(b) all mines, minerals, and quarries in and under the land subject to the provisions of 84-5401 and 84-7901; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(3) The term "improvements" includes all buildings, structures, fixtures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. If the mobile home or house trailer is an improvement located on land not owned by the owner of such improvement, the improvement is assessed as a leasehold improvement to real property and delinquent taxes can be a lien only on the leasehold improvement.

(4) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the term "real estate" and "improvements".

(5) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(6) The term "mobile home" means forms of housing known as "trailers", "house trailers", or "trailer coaches" exceeding 8 feet in width or 32 feet in length, designed to be moved from one place to another by an independent power connected to them.

(7) The term "assessed value" means the value of property as defined in 84-401.

(8) The term "taxable value" means the percentage of assessed value as provided for in 84-301.2 through 84-301.19 [84-301.21].

History: En. Sec. 4, p. 74, L. 1891; re-en. Sec. 3680, Pol. C. 1895; re-en. Sec. 2501, Rev. C. 1907; re-en. Sec. 1996, R. C. M. 1921; amd. Sec. 1, Ch. 99, L. 1939; amd. Sec. 1, Ch. 296, L. 1967; amd. Sec. 1, Ch. 450, L. 1975; amd. Sec. 1, Ch. 498, L. 1977; amd. Sec. 48, Ch. 566, L. 1977. Cal. Pol. C. Sec. 3617.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 498 and once by Ch. 566. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

State Funded Homestead Tax Relief Act

Chapter 457, Laws of 1977, read "Section 1. The 'state funded homestead relief act' (initiative No. 72, passed November 2, 1976) is amended to read as follows:

"Section 1. Short Title. This act shall be known and may be referred to as the 'state funded homestead tax relief act'.

"Section 2. Definitions: (1) 'Homestead' means a dwelling and appurtenant land, not to exceed 1 acre, used as the principal residence of the household of the owner.

"(2) 'Dwelling' means a structure intended for human habitation; mobile homes, as defined in 84-6601, are specifically included.

"(3) 'Household' means a person or persons who live in the same dwelling sharing its furnishings, facilities, accommodations, and expense. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

"(4) 'Total taxable value' means the taxable value of a homestead.

"(5) 'State's share of the taxable value' means a taxable value equivalent to $5,000 of the appraised value of a homestead or the total taxable value of a homestead, whichever amount is less.

"(6) 'State supported mill levies' means all property tax levies which apply to habitable property except levies for single purpose districts, voted elementary and secondary school levies, the university 6-mill levy for the retirement of bonded indebtedness, and voted levies for special improvement district reserve funds which are not countywide or which are supported by a fee or charge rather than an ad valorem tax levy.

"(7) 'Single purpose district' means a taxing jurisdiction created by resolution of the local governing body or petition of the residents to perform one governmental function, such as, but not limited to, fire, cemetery and lighting districts and weed, rodent, or mosquito control districts.

"(8) 'State's share of the tax liability' means the state share of the taxable value for each homestead in each taxing jurisdiction times the state supported mill levies in that taxing jurisdiction times the fraction obtained by dividing the fiscal year appropriation provided by the legislature less administrative costs by the statewide value of the state's share of the taxable value.

"Section 3. Exclusions. No homestead owner may apply for relief on a homestead which is leased or rented to another by its owner for more than 3 months during the year-long period preceding the due date for applications for relief under this act.

"Section 4. Homestead owner's tax liability. The tax liability of a homestead owner shall be computed by deducting the state's share of the tax liability from the tax liability on the total taxable value. Each tax statement sent to an eligible applicant in whose name the property is assessed shall set forth separately the total tax due, the state's share of the tax liability and the homestead owner's tax liability and shall label the amounts accordingly.

"Section 5. Duties of the department of revenue. (1) The department of revenue shall provide application forms for relief under this act available to all owners of homestead property. In order to be eligible for relief under this act, an owner must file with the agent of the department of revenue a completed application on or before June 30 of the year for which relief is sought, or within 30 days of distribution of the forms by the department, whichever is later.

"(2) The department shall determine the eligibility of each applicant for relief.

"(3) The department shall compute the state's share of the tax liability for each eligible homestead owner according to this act and shall certify the total amount of the state's share of the liability for each county.

"(4) The department may adopt rules necessary for the administration of this act.

"Section 6. Remission of state share to counties. The state shall remit the amount of the state's share of the tax liability to the county treasurer of each county in two equal payments; the first no later than November 30 of each year and the second no later than the following May 31.

"Section 7. Duties of the county treasurer. The county treasurer shall credit each expenditure account with the amount received from the state treasurer in accordance with the mill levy for that account no later than December 31 for the first payment and June 30 for the second payment.

"Section 2. Applicable tax years. This act applies only to tax years 1977 and 1978.

"Section 3. Effective date. This act is effective on its passage and approval." Approved April 20, 1977.

Amendments

The 1967 amendment, in the paragraph beginning "Third," inserted "mobile homes" after "structures"; inserted "including mobile homes, situated upon" after "improvements"; and added the paragraph beginning "Seventh."

The 1975 amendment rewrote the paragraph designated "Third," which read "The term 'improvements' includes all buildings, structures, mobile homes, fixtures, fences and improvements, including mobile homes, situated upon, erected upon or affixed to the land, whether title has been acquired to said land or not."

Chapter 498, Laws of 1977, inserted the reference to 84-7901 in the subdivision now designated (2)(b); and made minor changes in style.

Chapter 566, Laws of 1977, designated the subdivisions as (1) through (6); deleted "including mobile homes and house trailers" after "fences, and improvements" in the first sentence of subdivision (3); inserted "or housetrailer" in two places in the second sentence of subdivision (3); deleted the definitions of "value" and "full cash value"; added subdivisions (7) and (8); and made minor changes in phraseology, punctuation and style. For previous version, see parent volume and prior amendment notes.

84-102. "Person" defined. As used in this title (except chapters 15 and 49), unless the context indicates otherwise, the term "person" means

an individual, corporation (domestic or foreign), partnership, association, joint-stock company, or syndicate.

History: En. 84-102 by Sec. 1, Ch. 52, L. 1977.

Title of Act

An act for a standard definition of the word "person" in the taxation statutes; deleting inconsistent definitions from Title 84, R. C. M. 1947; amending sections 84-202, 84-704, 84-1601, 84-2301, 84-2401, 84-2402, 84-2404, 84-2405, 84-2410, 84-2411, 84-3501, 84-3502, 84-3510, 84-3512, 84-4155, 84-4166, 84-5402, 84-5410, 84-5413, 84-6201, 84-6401, and 84-7003, R. C. M. 1947; repealing sections 84-1101, 84-1201, 84-2001, 84-2201, and 84-5901, R. C. M. 1947.

CHAPTER 2—PROPERTY SUBJECT TO TAXATION—BASIS FOR TAXATION

Section
84-201. Property subject to taxation.
84-202. Exemptions from taxation.
84-202.1. Certain community services buildings exempt.
84-207. Privilege tax upon possession and use of tax-exempt property—exceptions.
84-208. Rate of tax same as ad valorem property tax—credit against tax on use of federally owned property.
84-209. Assessment—collection and distribution—taxes shall not become a lien against property.
84-210. Failure to pay tax—remedies of county.
84-212. Exemption—metal mines gross proceeds.

84-201. (1997) **Property subject to taxation.** All property in this state is subject to taxation, except as provided otherwise.

History: Ap. p. Sec. 1667, Comp. Stat. 1887; en. Sec. 1, p. 73, L. 1891; re-en. Sec. 3670, Pol. C. 1895; re-en. Sec. 2498, Rev. C. 1907; re-en. Sec. 1997, R. C. M. 1921; amd. Sec. 1, Ch. 126, L. 1977. Cal. Pol. C. Sec. 3607.

Amendments

The 1977 amendment substituted "otherwise" for "in the next section" at the end of the section.

Flathead Reservation Indians

This section is invalid in so far as it requires the payment of a motor vehicle tax of other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, — US —, 48 L Ed 2d 96, 96 S Ct 1634, affirming 392 F Supp 1325.

84-202. (1998) **Exemptions from taxation.** (1) (a) The property of the United States, the state, counties, cities, towns, school districts, irrigation districts organized under the laws of Montana and not operating for profit, municipal corporations, public libraries; buildings with land they occupy and furnishings therein owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church; such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals, and all property, both real and personal, without limitation as to amount except that real property owned shall not exceed 640 acres, owned and held by any association or corporation organized under Title 9, Cemeteries, provided such cemeteries and any land claimed to be exempt are not maintained and operated for private or corporate profit; institutions of purely public charity; evidence of debt secured by mortgages of record upon real or personal property in the state of Montana; and public art galleries and public observatories not used or held for private or corporate profit are

exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; and the terms "public art galleries and public observatories" mean only such art galleries and observatories, whether of public or private ownership, as are open to the public without charge or fee at all reasonable hours and are used for the purpose of education only.

(2) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States military personnel is used exclusively for educational, fraternal, benevolent, or purely public charitable purposes rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation, and all property, real or personal, in the possession of legal guardians of incompetent veterans of U.S. military service or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(3) All household goods and furniture, including clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence are exempt from taxation.

(4) (a) Freeport merchandise is exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state for storage in transit prior to shipment to a final destination outside the state and which have acquired a taxable situs within the state.

(b) Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged.

(c) Any person or other group seeking to qualify its property for inclusion in this class shall make application to the department of revenue in such manner or form as may be required by the department.

(5) The following agricultural products are exempt from taxation:

(a) all unprocessed, perishable fruits and vegetables in farm storage and owned by the producer;

(b) all nonperishable unprocessed agricultural products, except livestock, held in possession of the original producer for less than 7 months following harvest; and

(c) livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of 9 months as of the last day of any month and swine which have not attained the age of 3 months as of January 1.

(6) Moneys and credits are exempt from taxation.

(7) One-half of the contract sales price of coal sold by a coal producer who extracts less than 20,000 tons of coal in a calendar year is exempt from taxation.

(8) A truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached is exempt from taxation.

History: Ap. p. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1931; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; amd. Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977. Cal. Pol. C. Secs. 3607 and 3611.

Compiler's Notes

This section was amended eight times in 1977 by Chs. 52, 87, 112, 126, 393, 413, 492, and 576. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

Chapter 266, Laws of 1973, added the second, third and fourth paragraphs.

Chapter 361, Laws of 1973, inserted "all unprocessed, perishable fruits and vegetables in farm storage and owned by the producer" near the beginning of the first paragraph.

The 1974 amendment inserted the numerical subsection designation (1) at the beginning of the first paragraph; deleted the phrase inserted by Ch. 361, Laws of 1973, near the beginning of subsection (1); deleted the paragraphs added by Ch. 266, Laws of 1973, pertaining to the exemption of free port merchandise; and added subsection (2).

The 1975 amendments were set forth in accordance with Senate Resolution No. 6, signed April 19, 1975.

Chapter 52, Laws of 1977, deleted "corporation, firm, partnership, association" after "person" near the beginning of subdivision (4)(c); and made minor changes in phraseology, punctuation and style.

Chapter 87, Laws of 1977, added subsection (7) relating to a tax exemption on coal sold by a coal producer; and made minor changes in punctuation.

Chapter 112, Laws of 1977, added subsection (8) relating to a tax exemption on a truck canopy cover or topper; and made minor changes in phraseology, punctuation and style.

Chapter 126, Laws of 1977, substituted "military personnel" near the beginning of subsection (2) for "soldiers, sailors or marines who served in army or navy of United States"; substituted "U. S. military service" in the middle of subsection (2) for "the World War"; and made minor changes in phraseology, punctuation and style.

Chapter 393, Laws of 1977, added "and swine which have not attained the age of 3 months as of January 1" to the end of subdivision (5)(c).

Chapter 413, Laws of 1977, substituted "all property, both real and personal, without limitation as to amount except that real property owned shall not exceed 640 acres, owned and held by any association or corporation organized under Title 9, Cemeteries, provided such cemeteries and any land claimed to be exempt are not maintained and operated for private or corporate profit" in subsection (1)(a) for "places of burial not used or held for private or corporate profit."

Chapter 492, Laws of 1977, inserted "irrigation districts organized under the laws of Montana and not operating for profit" near the beginning of subsection (1)(a).

Chapter 576, Laws of 1977, deleted a subsection (7) which read: "A capital investment in a recognized nonfossil form of energy generation is exempt to the extent provided under section 84-7403."

Effective Dates

Section 3 of Ch. 376, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 30, 1974.

Section 2 of Ch. 87, Laws 1977 read "This act applies to taxable years commencing after December 31, 1976 based on coal production for the calendar year 1976."

"Educational Purposes"

The term "educational purposes," as used in section 2, article XII of the 1889 constitution and this section, exempting property used exclusively for "educational purposes" from taxation, is not defined in terms of common scholastic institutions of grammar school, high school and university

or college. Organizations for the social, intellectual, physical, or religious welfare of the children are exempt equally. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Religious education is exempt as an "educational purpose" and not as "actual religious worship" even though elements of the latter may be present and may serve to strengthen the exemption of all the property. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

"Exclusive Use" Defined

The words "exclusive use" consistently have been held to mean the primary and inherent use and not the mere secondary or incidental uses of the property. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Exemption of Church Camp

Where church summer camp, containing twenty-two acres of land and twenty-eight improvements, was "exclusively used for educational purposes" within the meaning of this section and section 2, article XII of the 1889 constitution, it was exempt from taxation. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Extent of Exemption

When exempting an institution of charity, sufficient residence and recreation area may also be exempt. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Hospitals

Personal property leased by nonprofit hospital and used exclusively for hospital purposes was exempt from taxation even though the lessor, a private profit corporation, received a profit from the lease; legislature intended to exclude "ownership" of property as a criterion in determining applicability of exemption to property "used exclusively for hospitals." Montana Deaconess Hospital v. Cascade County, — M —, 521 P 2d 203.

Limits of Public Charity

An institution of purely public charity, which is exempt from taxation under section 2, article XII of the 1889 constitution and this section, may be devoted to bringing people under religious influence, the beneficiaries of the charity may pay a small portion of the cost, and the activity may be limited to a particular class so long as the numbers who may participate remain somewhat indefinite. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Nonprofit Foundation

Nonprofit foundation operating and maintaining home for aged was entitled to tax exemption under statute granting exemption to institutions of purely public charity, notwithstanding evidence that foundation charged fees and imposed admission requirements. Bozeman Deaconess Foundation v. Ford, 151 M 143, 439 P 2d 915, 37 ALR 3d 558.

84-202.1. Certain community services buildings exempt. (1) The building and appurtenant land, not exceeding 1 acre, owned by a nonprofit community service organization is exempt from property taxation, except as provided in subsections (3) and (4), if such organization:

(a) is a lodge of a nationally recognized fraternal organization and does not sell food or beverages under license from the state of Montana; or

(b) furnishes services to senior citizens in the form of daytime or evening educational or recreational activities and does not furnish living accommodations to such citizens or sell food or beverages under license from the state of Montana; services qualifying under this provision must be recognized in the state plan on aging adopted by the department of social and rehabilitation services; or

(c) primarily furnishes facilities without charge, except that a minimal fee may be charged for janitorial services, for public meetings and entertainments.

(2) An applicant for exemption under this section shall demonstrate that it has been an active community service organization continuously from January 1, 1976.

(3) A building and lot exempted under this section shall be appraised, assessed, and subject to levies for any special improvement district if the special improvement directly benefits the building or lot.

(4) The exemption provided under this section may not be extended to any property owned by a community service organization described herein which is leased in whole or in part to any person for business or profit-making purposes.

History: En. 84-202.1 by Sec. 1, Ch. 491, L. 1977.

Title of Act

An act to exempt the building and appurtenant land of certain community service organizations from property taxation.

84-207. Privilege tax upon possession and use of tax-exempt property—exceptions. From and after the effective date of this act there is imposed and there shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. No tax may be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on such airport property are subject to tax. No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit or easement relates.

History: En. Sec. 1, Ch. 370, L. 1969; amd. Sec. 1, Ch. 387, L. 1977.

Compiler's Notes

This act became effective March 17, 1969.

Title of Act

An act to provide a privilege tax upon possession and use of tax-exempt property; providing exceptions thereto; fixing the rate of such tax and credit against tax; providing for assessment, collection and distribution of said taxes; providing penalties for failure to pay the tax and preserving constitutional exemption, and providing an effective date.

Amendments

The 1977 amendment inserted the second and third sentences.

84-208. Rate of tax same as ad valorem property tax—credit against tax on use of federally owned property. The tax imposed upon such possession or other beneficial use of tax-exempt property shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner thereof; provided that there shall be credited against the tax so imposed upon the beneficial use of property owned by the federal government the amount of payments which are made in lieu of taxes.

History: En. Sec. 2, Ch. 370, L. 1969.

84-209. Assessment—collection and distribution—taxes shall not become a lien against property. The tax imposed hereunder shall be assessed to such possessors or users of the tax-exempt property upon the same forms, and shall be collected and distributed at the same time and in the same manner as taxes assessed to owners, possessors, or other claimants of property which is subject to ad valorem taxation, except that such taxes shall

not become a lien against the property, and no such tax-exempt property may be attached, encumbered, sold or otherwise affected for the collection of the tax imposed hereunder.

History: En. Sec. 3, Ch. 370, L. 1969.

84-210. Failure to pay tax—remedies of county. A tax due and unpaid under this act shall constitute a debt due the county for and on behalf of the various taxing units concerned in the tax. If the tax imposed by this act or any portion thereof is not paid at the time the same becomes delinquent the county auditor may issue a warrant in the name of the county directed to the clerk of the district court in his county and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant and, in the appropriate columns, the amount of tax, penalties, interest and other costs for which the warrant is issued and the date when such warrant is filed, and thereupon the warrant so docketed shall have the force and effect of a judgment duly rendered by a district court and docketed in the office of the clerk thereof, and the county shall have the same remedies against the possessor user as any other judgment docket.

History: En. Sec. 4, Ch. 370, L. 1969.

84-211. Repealed.

Repeal

Section 84-211 (Sec. 5, Ch. 370, L. 1969), relating to exemptions granted by the 1889 Montana constitution, was repealed by Sec. 58, Ch. 100, Laws 1973, and Sec. 120, Ch. 405, Laws 1973.

84-212. Exemption—metal mines gross proceeds. Metal mines producing less than 20,000 tons of ore in a taxable year shall be exempt from property taxation on one-half of the merchantable value.

History: En. 84-212 by Sec. 6, Ch. 498, L. 1977.

Title of Act

An act providing for the ad valorem taxation of the gross proceeds of metal mines at a percentage of merchantable value; deleting metals from net proceeds taxation; amending sections 84-101, 84-301, 84-302, 84-401, and 84-5402, R. C. M. 1947; coordinating this act with other pending legislation; and providing an effective date.

CHAPTER 3—CLASSIFICATION OF PROPERTY FOR TAXATION—BASIS FOR TAXATION

Section

84-301.1. Classification of taxable property.
84-301.2. Class one property—description—taxable percentage.
84-301.3. Class two property—description—taxable percentage.
84-301.4. Class three property—description—percentage.
84-301.5. Class four property—description—taxable percentage.
84-301.6. Class five property—description—taxable percentage.
84-301.7. Class six property—description—taxable percentage.
84-301.8. Class seven property—description—taxable percentage.
84-301.9. Class eight property—description—taxable percentage.
84-301.10. Class nine property—description—taxable percentage.
84-301.11. Class ten property—description—taxable percentage.
84-301.12. Class eleven property—description—taxable property.
84-301.13. Class twelve property—description—taxable percentage.
84-301.14. Class thirteen property—description—taxable percentage.

84-301.15. Class fourteen property—description—taxable percentage.
84-301.16. Class fifteen property—description—taxable percentage.
84-301.17. Class sixteen property—description—taxable percentage.
84-301.18. Class seventeen property—description—taxable percentage.
84-301.19. Class eighteen property—description—taxable percentage.
84-301.20. Class nineteen property—description—taxable value.
84-301.21. Class of property—certain recreational vehicles.
84-307. Assessment and valuation of shares of banks—deductions.
84-308. Basis for imposition of taxes on moneyed capital and bank shares.
84-309. Reappraised real property—limitation on increased appraisals—table of taxable percentages.
84-310. Temporary authority to exceed mill levy limitations in certain cases.

84-301. Repealed.

Repeal

Section 84-301 (Sec. 1, Ch. 51, L. 1919; Sec. 1, Ch. 248, L. 1921; Sec. 1, Ch. 130, L. 1937; Sec. 1, Ch. 107, L. 1941; Sec. 1, Ch. 286, L. 1947; Sec. 1, Ch. 45, L. 1951; Sec. 1, Ch. 178, L. 1951; Sec. 1, Ch. 88, L. 1957; Sec. 1, Ch. 103, L. 1961; Sec. 2, Ch. 239, L. 1961; Sec. 1, Ch. 168, L. 1965; Sec. 1, Ch. 215, L. 1967; Sec. 1, Ch. 294, L. 1967; Sec. 2, Ch. 296, L. 1967; Sec. 1, Ch. 292, L. 1969; Sec. 1, Ch. 305, L. 1969; Sec. 1, Ch. 35, L. 1971; Sec. 1, Ch. 312, L. 1971; Sec. 1, Ch. 317, L. 1971; Sec. 1, Ch. 354, L. 1971; Sec. 2, Ch. 266, L. 1973; Sec. 2, Ch. 361, L. 1973; Sec. 1, Ch. 405, L. 1973; Sec. 1, Ch. 489, L. 1973; Sec. 1, Ch. 223, L. 1974; Sec. 2, Ch. 376, L. 1974; Sec. 1, Ch. 299, L. 1975; Sec. 2, Ch. 341, L. 1975; Sec. 1, Ch. 372, L. 1975; Sec. 1, Ch. 397, L. 1975; Sec. 1, Ch. 427, L. 1975; Sec. 1, Ch. 471, L. 1975; Sec. 14, Ch. 525, L. 1975; Sec. 42, Ch. 535, L. 1975; Sec. 8, Ch. 548, L. 1975; Sec. 1, Ch. 497, L. 1977; Sec. 2, Ch. 498, L. 1977; Sec. 1, Ch. 499, L. 1977; Sec. 1, Ch. 502, L. 1977; Sec. 3, Ch. 576, L. 1977), relating to classification of property for taxation, was repealed by Sec. 74, Ch. 566, Laws of 1977.

84-301.1. Classification of taxable property. For the purpose of taxation, the taxable property in the state shall be classified in accordance with 84-301.2 through 84-301.19 [84-301.21].

History: En. 84-301.1 by Sec. 1, Ch. 566, L. 1977.

Title of Act

An act to clarify the property tax system by generally revising and recodifying sections relating to property classification and taxation and by establishing market value as the basis of taxation, except for certain cases, and adjusting the taxable percentage accordingly; amending sections 11-988, 11-1011, 11-1019, 11-1301, 11-1909, 11-1919, 11-2201, 11-2205, 11-2303, 11-3921, 11-4111, 14-307, 16-502, 16-807, 16-808, 16-1152, 16-1412, 16-2010.1, 16-4020, 32-3107, 46-1914, 53-114, 53-1025, 69-3504, 75-7104, 75-8104, 84-101, 84-401, 84-402, 84-404, 84-406, 84-602, 84-708.1, 84-728, 84-4605, 84-4701, 84-4701.2, 84-4713, 84-5103, 84-5211, 84-5214, 84-5216, 84-5406, 84-6008, 84-6102, 84-6103, 84-6205, 84-6407, 84-7513, and 89-3403, R. C. M. 1947; and repealing sections 69-3923, 84-301, and 84-302, R. C. M. 1947.

84-301.2. Class one property—description—taxable percentage. (1) Class one property includes the right of entry which is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals. The market value of the right of entry is determined by the department of revenue.

(2) Class one property is taxed at 100% of its market value.

History: En. 84-301.2 by Sec. 2, Ch. 566, L. 1977.

84-301.3. Class two property—description—taxable percentage. (1) Class two property includes the annual net proceeds of all mines and mining claims, except coal and metal mines.

(2) Class two property is taxed at 100% of its annual net proceeds after deducting the expenses specified and allowed by 84-5403.

History: En. 84-301.3 by Sec. 3, Ch. 566, L. 1977.

84-301.4. Class three property—description—percentage. (1) Class three property includes the annual gross proceeds of coal mines using the strip mining method.

(2) Class three property is taxed at 45% of its assessed value, which is 100% of annual gross proceeds.

History: En. 84-301.4 by Sec. 4, Ch. 566, L. 1977.

84-301.5. Class four property—description—taxable percentage. (1) Class four property includes the annual gross proceeds of underground coal mines.

(2) Class four property is taxed at 33 1/3% of its assessed value, which is 100% of annual gross proceeds.

History: En. 84-301.5 by Sec. 5, Ch. 566, L. 1977.

84-301.6. Class five property—description—taxable percentage. (1) Class five property includes moneyed capital and shares of banks.

(2) Class five property is valued and taxed as provided under 84-304, 84-305, 84-307, 84-308, and chapter 46, Title 84.

History: En. 84-301.6 by Sec. 6, Ch. 566, L. 1977.

84-301.7. Class six property—description—taxable percentage. (1) Class six property includes agricultural land, as defined in 84-437.2.

(2) Class six property is taxed at 30% of its assessed value.

History: En. 84-307.7 by Sec. 7, Ch. 566, L. 1977.

84-301.8. Class seven property—description—taxable percentage. (1) Class seven property includes:

(a) centrally assessed utility allocations after deductions of locally assessed properties, except as provided in:

(i) class fourteen for rural telephones; and

(ii) class eighteen for cooperatives;

(b) all other property not included in classes one through six and classes eight through nineteen;

(c) large trucks and commercial trailers valued in the department of revenue's truck and commercial trailer schedule.

(2) Class seven property is taxed at 16% of its market value.

History: En. 84-301.8 by Sec. 8, Ch. 566, L. 1977.

84-301.9. Class eight property—description—taxable percentage. (1) Class eight property includes:

(a) all agricultural and other tools, implements, and machinery except:

(i) large farm machinery included in class twelve; and

(ii) tools, implements and machinery included in class fourteen;

(b) gas and other engines and boilers and threshing machines and outfits used therewith;

(c) harness, saddlery, and robes;

(2) Class eight property is taxed at 13% of its market value.

History: En. 84-301.9 by Sec. 9, Ch. 566, L. 1977.

84-301.10. Class nine property—description—taxable percentage. (1) Class nine property includes:

(a) automobiles, motor trucks, and other power-driven cars and vehicles of all kinds, except mobile homes, motorcycles, aircraft, camper trailers, and truck campers; and

(b) furniture and fixtures used in commercial, office, and hotel activities, except improvements included in class thirteen.

(2) Class nine property is taxed at 13.3% of its market value.

History: En. 84-301.10 by Sec. 10, Ch. 566, L. 1977.

Compiler's Notes

Section 11, Ch. 566, Laws of 1977 read "Instructions to code commissioner and publisher. If House Bill 85 [chapter 497] is enacted into law, the code commissioner and the publisher shall transfer livestock, poultry, and unprocessed products of both from class eight [nine] property to class fourteen property."

84-301.11. Class ten property—description—taxable percentage. (1) Class ten property includes:

(a) aerial, surface, and portable ski lifts and ski tows, including the towers, cables, ropes, sheave assemblies, conveying devices, power units, and all accessories;

(b) manufacturing and mining machinery, fixtures, and supplies, except those included in class eighteen; and

(c) camper trailers and truck campers valued in the "N.A.D.A. Recreational Vehicle Appraisal Guide".

(2) Class ten property is taxed at 12% of market value.

History: En. 84-301.11 by Sec. 12, Ch. 566, L. 1977.

84-301.12. Class eleven property—description—taxable property. (1) Class eleven property includes:

(a) all land, except agricultural land meeting the qualification of 84-437.2;

(b) all improvements, except those included in classes fifteen and eighteen;

(c) all trailers affixed to land owned, leased, or under contract for purchase by the trailer owner; and

(d) all mobile homes, except:

(i) those held by a distributor or dealer of mobile homes as part of his stock in trade; and

(ii) those included in class fifteen.

(2) Class eleven property is taxed at 12% of its market value, or so much of 12% as is determined under 84-309, whichever is less.

History: En. 84-301.12 by Sec. 13, Ch. 566, L. 1977.

84-301.13. Class twelve property—description—taxable percentage. (1) Class twelve property includes:

(a) boats and all watercraft;

(b) aircraft;

(c) motorcycles; and

(d) large farm machinery valued in the official guide tractors and farm implements and department valuation schedules.

(2) Class twelve property is taxed at 11% of its market value.

History: En. 84-301.13 by Sec. 14, Ch. 566, L. 1977.

84-301.14. Class thirteen property—description—taxable percentage. (1) Class thirteen property includes the incremental increase in the value of real estate produced by repairing, maintaining, or improving existing improvements.

(2) Class thirteen property is taxed at:

(a) 2.4% of the market value for the first full year following completion of the repair, maintenance, or improving of existing improvements;

(b) 4.8% of the market value for the second full year following completion of the repair, maintenance, or improving of existing improvements;

(c) 7.2% of the market value for the third full year following completion of the repair, maintenance, or improving of existing improvements;

(d) 9.6% of the market value for the fourth full year following completion of the repair, maintenance, or improving of existing improvements; and

(e) 12% of the market value for the fifth full year and every year thereafter following completion of the repair, maintenance, or improving of existing improvements.

History: En. 84-301.14 by Sec. 15, Ch. 566, L. 1977.

84-301.15. Class fourteen property—description—taxable percentage. (1) Class fourteen property includes:

(a) all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property, except that included in class eighteen, used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less. The average circuit miles for each station on the telephone communications system must be more than 1¼ miles to qualify for this classification;

(b) tools, implements, and machinery used to repair and maintain machinery not used for manufacturing and mining purposes;

(c) electric transformers and meters, electric light and power substation machinery, and natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by centrally assessed public utilities, and tools used in the repair and maintenance of the property included in this subsection; and

(d) livestock, poultry, and unprocessed products of both.

(2) Class fourteen is taxed at 8% of its market value.

History: En. 84-301.15 by Sec. 16, Ch. 566, L. 1977.

Compiler's Notes

See the instructions to code commissioner and publisher, Section 11, Ch. 566, Laws 1977, set forth in the note following 84-301.10.

84-301.16. Class fifteen property—description—taxable percentage. (1) Class fifteen property includes so much of the market value of any improvement on real property, a trailer affixed to land, or mobile home and appurtenant land not exceeding 5 acres, as does not exceed $35,000, when such dwelling and land are owned or under contract for deed and are actually occupied for at least 10 months per year as the primary residential dwelling of:

(a) a widow or widower 62 years of age or older who qualifies under the income limitations of (c) of this subsection;

(b) a widow or widower of any age with dependent children who qualifies under the income limitations of (c) of this subsection; or

(c) a recipient or recipients of retirement or disability benefits whose total income from all sources is not more than $7,000 for a single person or $8,000 for a married couple.

(2) (a) A person applying for classification of property under this class must make an affidavit to the department of revenue on a form provided by the department without cost as to:

(i) his income, if applicable;

(ii) his retirement benefits, if applicable;

(iii) his marital status, if applicable;

(iv) the fact that he maintains the land and improvements as his primary residential dwellings; and

(v) such other information as is relevant to the applicant's eligibility.

(b) This application must be made before March 1 of the year after the applicant becomes eligible under this classification.

(c) For the purpose of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for the purposes of 94-7-203, relating to the criminal offense of false swearing.

(3) Class fifteen property is taxed at 6% of its market value or so much of 6% as is determined under 84-309, whichever is less.

History: En. 84-301.16 by Sec. 17, Ch. 566, L. 1977; amd. Sec. 2, Ch. 499, L. 1977; amd. Sec. 8, Ch. 576, L. 1977.

Compiler's Notes

Section 3 of Ch. 499, Laws 1977 read "Statement of intent. It is intended, by section 2 of this act, to conform the substantive policies which House Bill 215 [Ch. 499] enacts into the format which House Bill 70 [Ch. 566] will create. Section 2 further reflects House Bill 70 [Ch. 566], as amended, in that it deletes the prohibition against reappraising class fifteen property during the occupancy of the dwelling by a qualified taxpayer or taxpayers. Reappraisal of class fifteen property would be permitted, and the taxable percentage of that reappraised value would then fall to a figure below 6%, as set forth in the Senate amendments to House Bill 70 [Ch. 566]. If reappraisal brings the value above $35,000 the first $35,000 would be taxed in this class and the excess taxed on other real property. The publisher of the 1977 Supplements to the Revised Codes of Montana 1947, is directed to publish section 2 of this act as the official version of section 84-301.16 in the event House Bill 70 [Ch. 566] is enacted."

Section 8, Ch. 576, Laws 1977, provides: "Coordination with other legislation. If House Bill 70 [Ch. 566] is enacted, then in lieu of the amendments to 84-301 enacted by this act, classes fifteen and eighteen in House Bill 70 [Ch. 566] shall be further amended by deleting references to capital investments in recognized nonfossil forms of energy generation and in building for an energy conservation purpose."

Amendments

Chapter 499, Laws 1977, changed subsection (1) to include so much of the market value of the described property as does not exceed $35,000 instead of limiting the included property to that not having a market value in excess of $27,500; substituted "not more than $7,000 for a single person or $8,000 for a married couple" in subsection (1)(c) for "not more than $6,000 for a single person or $6,800 for a married couple"; added subsections (2)(a)(v) and (2)(b); deleted a provision authorizing the county welfare board to investigate the answers of an applicant on the form; and deleted a provision prohibiting increasing the assessed value of the property during the life of the recipient of retirement benefits or widow or widower covered under this class, unless the owner-resident makes a substantial improvement in the dwelling.

Effective Date

Section 4 of Ch. 499, Laws 1977, provided the act should be effective on its passage and approval. Approved April 26, 1977.

84-301.17. Class sixteen property—description—taxable percentage. (1) Class sixteen property includes:

(a) business inventories as defined in this section; and

(b) mobile machines, valued as other heavy construction equipment is valued, used in new industries, as defined in class eighteen.

(2) Mobile machines used in new industry are subject to the conditions imposed in class eighteen for other property used in new industries.

(3) "Business inventories" includes goods intended for sale or lease in the ordinary course of business and raw materials and work in progress with respect to such goods. Business inventories shall not include goods leased or rented or mobile homes held by a dealer or distributor as part of his stock in trade.

(4) The market value of business inventories, for property tax purposes, is the cost to the person subject to the inventory tax.

(5) Class sixteen property is taxed at 4.2% of market value.

History: En. 84-301.17 by Sec. 18, Ch. 566, L. 1977.

84-301.18. Class seventeen property—description—taxable percentage. (1) Class seventeen property includes all unprocessed agricultural products on the farm or in storage, except:

(a) all perishable fruits and vegetables in farm storage and owned by the producer; and

(b) livestock and poultry and the unprocessed products of both.

(2) Class seventeen property is taxed at 3.5% of market value.

History: En. 84-301.18 by Sec. 19, Ch. 566, L. 1977.

84-301.19. Class eighteen property—description—taxable percentage. (1) Class eighteen property includes:

(a) a dwelling house and the lot on which it is erected, owned, and occupied by a resident of the state who:

(i) has been honorably discharged from active service in any branch of the armed services; and

(ii) is rated 100% disabled due to a service-connected disability by the United States veterans administration or its successor. In the event of the veteran's death, the dwelling house and the lot on which it is erected shall remain in this class as long as the surviving spouse remains unmarried and the owner and occupant of the property.

(b) all property used and owned by cooperative rural electrical and cooperative rural telephone associations as provided in (2)(a) of this section;

(c) air pollution control equipment as defined in this section; and

(d) new industrial property as defined in this section.

(2) (a) The property of all cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana is included in this class; except that when less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town are served by the cooperative organization, the property is included in class eighteen.

(b) "Air pollution control equipment" means facilities, machinery, or equipment, attached or unattached to real property, utilized to reduce, eliminate, control, or prevent air pollution. The department of health and environmental sciences determines if such utilization is being made.

(c) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, except mobile machinery, which is used by a new industry during the first 3 years of its operation. The property may not have been assessed prior to July 1, 1961, within the state of Montana.

(i) New industrial property is limited to industries that:

(A) manufacture, mill, mine, produce, process, or fabricate materials;

(B) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials; or

(C) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

(ii) New industrial property does not include:

(A) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions;

(B) a plant that will create adverse impact on existing state, county, or municipal services; or

(C) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

(c) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant or plants in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries.

(3) The department of revenue shall promulgate rules for the determination of what constitutes an adverse impact, taking into consideration the number of people to be employed and the size of the community in which the location is contemplated. Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the department of revenue in such a manner and form as the department requires. Once the department has made an initial determination that the industrial facility qualifies as new industrial property, the department shall then, upon proper notice, hold a hearing to determine if the new industrial classification should be retained by the property. The local taxing authority may appear at the hearing and may waive its objection to retention of this classification if the industry agrees to the prepayment of taxes sufficient to satisfy tax requirements created by the location and construction of the facility during the construction period. When a prepayment of taxes is required, the maximum amount of prepayment shall be the amount of tax the industry would have paid without the application of the class seven percentage to such property.

(4) If a major new industrial facility qualifies under class eighteen, the reduction of its yearly payment of property taxes for reimbursement of its prepaid taxes as provided for in 84-41-105 does not begin until the class eighteen qualification expires.

(5) Class eighteen property shall be taxed at 2.8% of its market value, or in the case of property classified under (1)(a) of this section, so much of 2.8% as is determined under 84-309, whichever is less.

History: En. 84-301.19 by Sec. 20, Ch. 566, L. 1977.

84-301.20. Class nineteen property—description—taxable value. (1) Class nineteen property includes the annual gross proceeds of metal mines.

(2) Class nineteen property is taxed at 3% of its assessed value, which is 100% of annual gross proceeds.

History: En. Sec. 15, Ch. 498, L. 1977.

Separability Clause

Section 16 of Ch. 498, Laws 1977, read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

84-301.21. Class of property—certain recreational vehicles. (1) There is a class of property which includes a pickup camper, travel trailer, in-

cluding a fifth wheel trailer, or motor home which is owned by and is actually used primarily by a person 60 years of age or older who is retired from full employment and whose total income each year from all sources does not exceed the income limitations set in Class Fifteen of this section for a single person or married couple, whichever is applicable.

(2) A person who applies for this classification must file an affidavit with the department of revenue as to his income, as set forth in Class Fifteen herein.

(3) This class of property is taxed at 6% of market value.

History: En. Sec. 3, Ch. 502, L. 1977.

Title of Act

An act to amend sections 84-301 and 84-302, R. C. M. 1947, to provide for classification and basis for taxation of recreational vehicles owned by certain senior citizens.

84-302. (2000) **Repealed.**

Repeal

Section 84-302 (Sec. 2, Ch. 51, L. 1919; Sec. 3, Ch. 239, L. 1961; Sec. 2, Ch. 168, L. 1965; Sec. 2, Ch. 305, L. 1969; Sec. 2, Ch. 35, L. 1971; Sec. 2, Ch. 317, L. 1971; Sec. 3, Ch. 266, L. 1973; Sec. 1, Ch. 49, L. 1974; Sec. 2, Ch. 427, L. 1975; Sec. 15, Ch. 525, L. 1975; Sec. 3, Ch. 498, L. 1977; Sec. 2, Ch. 502, L. 1977), relating to basis for imposition of taxes, was repealed by Sec. 74, Ch. 566, Laws of 1977.

84-306. (2000.4) **Repealed.**

Repeal

Section 84-306 (Sec. 4, Ch. 64, L. 1929; Sec. 1, Ch. 34, L. 1939), relating to valuation of shares of stock of national banks, was repealed by Sec. 1, Ch. 25, Laws 1971.

84-307. (2000.5) **Assessment and valuation of shares of banks—deductions.** (1) The shares of all banking corporations engaged in the banking business in Montana shall be valued for the purpose of taxation at the full cash value thereof as shown on the books of the bank, less:

(a) the book value of the real estate, moneyed capital and other property of any such bank assessed and taxed as the property of said bank; and

(b) that portion of the book value of United States obligations owned by the bank as bears the same ratio to the value of such United States obligations as the stock equity of such bank bears to the total assets of such bank as shown on the books of the bank.

(2) Valuation and assessment of such shares for the purposes of taxation shall be made as provided in Title 84, chapter 46, except that, for purposes of computing the deduction allowed by subsection (1)(b) of this section, the book value of United States obligations owned by a bank shall be the average of the book values of the United States obligations owned by the bank on the last banking day of each of the 12 months of the preceding taxable year.

History: En. Sec. 5, Ch. 64, L. 1929; amd. Sec. 2, Ch. 25, L. 1971; amd. Sec. 1, Ch. 501, L. 1977.

Amendments

The 1971 amendment deleted "state" before "banking corporations"; and inserted "book" before "value of the real estate."

The 1977 amendment deleted "and assessed" after "shall be valued" near the beginning of subsection (1); inserted "as shown on the books of the bank" in subsection (1); added subdivision (1)(b) and subsection (2); and made minor changes in punctuation and style.

Period of Effectiveness of 1977 Amendment

Section 2 of Ch. 501, Laws 1977, read: "This act is effective upon its passage and

approval [April 26, 1977] and is effective for all valuation, assessment, and taxation of the specified property for the taxable years 1977 and 1978."

For years after 1978, the section will read as follows:

"84-307. Assessment of shares of banks —deductions. The shares of all banking corporations engaged in the banking business in Montana shall be valued and assessed for the purpose of taxation at the full cash value thereof, less the book value of the real estate, monied capital and other property of any such bank assessed and taxed as the property of said bank."

Repealing Clause

Section 1 of Ch. 25, Laws 1971 read "Section 84-306, R. C. M. 1947, is repealed."

Effective Date

Section 3 of Ch. 25, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 16, 1971.

Correction of Mistake

Where bank on its statement for tax assessment had mistakenly omitted its real estate deduction, the court had authority to allow the error to be corrected. Montana Nat. Bank of Roundup v. State Department of Revenue, — M —, 539 P 2d 722.

Reserve for Bond Losses

Although reserves for bad debts are commonly deducted under the general authority of this section, reserves for bond losses are too speculative to be allowed for bank that suffered no actual loss in its bond account and did not actively trade or sell its bonds. Montana Nat. Bank of Roundup v. State Department of Revenue, — M —, 539 P 2d 722.

84-308. (2000.6) **Basis for imposition of taxes on moneyed capital and bank shares.** As a basis for the imposition of taxes upon the different classes of property herein specified, a percentage of the true and full value of each class shall be taken as follows:

Moneyed capital and shares of banks, both national and state, thirty per centum (30%) of true and full value on that portion of the true and full value not represented by surplus, as shown on the books of the bank; seven per centum (7%) on that portion of the true and full value represented by surplus as shown on the books of the bank; provided that on that portion of any of such surplus which is over and above the amount represented by the stated capital of a bank, the excess shall be subject to thirty per centum (30%) of true and full value. The state department of revenue shall prepare, distribute and cause to be used such forms as it may require to obtain from the banks doing business in this state reports of such facts and figures as may be necessary to ascertain the taxable value of bank shares as a basis for the imposition of taxes.

History: En. Sec. 6, Ch. 64, L. 1929; amd. Sec. 1, Ch. 172, L. 1957; amd. Sec. 1, Ch. 516, L. 1973; amd. Sec. 3, Ch. 341, L. 1975.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the second sentence of the second paragraph.

The 1975 amendment deleted a second paragraph which read "Moneys and credits, seven per centum (7%) of true and full value."

Adjustment of Books by Department of Revenue

The department of revenue cannot, through regulation, require the depreciated or appreciated value of the bond portfolio to be applied against the amount of undivided profit as shown on the books of the bank, or adjust the surplus figure as shown on the books of the bank, to arrive at the bank's assessed value, but must use only those figures shown on the books of the bank. First Nat. Bank of Lewistown v. Department of Revenue, — M —, 541 P 2d 1219.

84-309. Reappraised real property—limitation on increased appraisals —table of taxable percentages. (1). The director of revenue shall certify

to the governor, before June 30, 1978, the percentage by which the market value of all property in the state classified under sections 84-301.12, 84-301.16(1)(b), and 84-301.19(1)(a) as of January 1, 1977 has increased due to the revaluation conducted under 84-429.14. This figure is the "certified statewide percentage increase".

(2) The taxable value of property in these three classes is determined as a function of the certified statewide percentage increase in accordance with the following table:

Certified statewide percentage increase	84-301.12	84-301.16 (1) (b)	84-301.19 (1) (a)
0			
1%	11.89	one-half	7/30
2%	11.79	of the	of the
3%	11.69	equiva-	equiva-
4%	11.58	lent	lent
5%	11.49	taxable	taxable
6%	11.39	percent-	percent-
7%	11.29	age under	age under
8%	11.20	84-301.12	84-301.12
9%	11.11		
10%	11.02		
11%	10.93		
12%	10.84		
13%	10.76		
14%	10.67		
15%	10.59		
16%	10.51		
17%	10.43		
18%	10.35		
19%	10.28		
20%	10.20		
21%	10.13		
22%	10.05		
23%	9.98		
24%	9.91		
25%	9.84		
26%	9.77		
27%	9.70		
28%	9.64		
29%	9.57		
30%	9.51		
31%	9.44		
32%	9.38		
33%	9.32		
34%	9.26		
35%	9.20		
36%	9.14		
37%	9.08		

38%	9.03
39%	8.97
40%	8.91
41%	8.86
42%	8.81
43%	8.75
44%	8.70
45%	8.65
46%	8.60
47%	8.55
48%	8.50
49%	8.45
50%	8.40

History: En. 84-309 by Sec. 72, Ch. 566, L. 1977.

84-310. Temporary authority to exceed mill levy limitations in certain cases. Taxing jurisdictions may adopt and levy for a budget equal to 105% of the preceding year's budget, statutory mill levy limitations notwithstanding, unless the taxable valuation therein has increased to a level which would allow statutory mill levies to produce a budget equal to 105% of the preceding year's budget.

History: En. 84-310 by Sec. 73, Ch. 566, L. 1977.

Repealing Clause

Section 74 of Ch. 566, Laws 1977, read "Sections 69-3923, 84-301, and 84-302, R. C. M. 1947, are repealed. However, amendments to 84-301 or 84-302, R. C. M. 1947, enacted by this legislative session shall be incorporated into the equivalent sections enacted in this act as directed by such other amendatory acts."

CHAPTER 4—ASSESSMENT OF PROPERTY—POWERS, DUTIES AND LIABILITY OF COUNTY ASSESSOR

Section

84-401. Assessments, definitions, and exceptions.
84-402. County assessor to be agent of the department of revenue.
84-403. Appeal for taxpayer aggrieved at percentage assignment.
84-404. Department of revenue to assign percentage basis—when.
84-405. Assessor's blanks and rolls to be provided by state department of revenue.
84-406. General assessment day.
84-409. Statement—what to contain.
84-410. Department of revenue to furnish blanks, etc.
84-411. Statement to be filled out and returned to agent of the department of revenue.
84-412. General powers of department of revenue.
84-413. Method of making assessment upon refusal of statement.
84-414. Assessment of unknown or absent owners.
84-415. Assessment of unknown or absent owners—in whose name property to be assessed.
84-422.1. Assessment of business inventories.
84-422.2. Statement of purpose.
84-422.3. Business inventory reporting—copy of federal schedule.
84-427. Assessment of railroads, telegraph, telephone and electric light lines.
84-428. Railroads—how assessed.
84-429. Land—how assessed.
84-429.7. Classification and appraisal—duties of the department of revenue.
84-429.9. Assessments to be made on classification and appraisal.
84-429.11. Notice of classification and appraisal to owners—appeals.
84-429.12. Classification and appraisal—general and uniform methods.
84-429.14. Periodic revaluation of taxable property.

84-429.15. Equalization of valuations.
84-429.16. Use of valuations.
84-429.17. Act supplemental.
84-437.1. Legislative intent as to agricultural property.
84-437.2. Eligibility of land for valuation as agricultural.
84-437.3. Agricultural uses only considered in valuation.
84-437.4. Roll-back tax—computation.
84-437.5. Roll-back tax procedures governed by nonagricultural provisions.
84-437.6. Improvements on agricultural land.
84-437.8. Continuance of valuation as agricultural land—roll-back tax attaching on change of use.
84-437.9. Roll-back tax on change of use of part of tract.
84-437.10. Agricultural land taken under eminent domain.
84-437.11. Tract crossing county line considered as whole.
84-437.12. Factual details as to agricultural land to be shown on tax list.
84-437.13. Rules—regulations—forms.
84-437.14. Violation as misdemeanor.
84-437.15. Reclassification by department of revenue.
84-437.16. Reclassification by owner.
84-437.17. Refund of late filing fee.
84-439. Property concealed, misrepresented, etc.
84-441. Supplemental assessment.
84-448. Annual settlements.
84-449. Department of revenue to collect farm statistics.
84-450. Delivery to commissioner of agriculture.
84-451. Statistics, how obtained.
84-452. Penalty for refusal to furnish statistics.

84-401. (2001) **Assessments, definitions, and exceptions.** (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 84-429.14 through 84-429.17.

(2) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in class one and classes seven through eighteen. For purposes of taxation, assessed value is the same as appraised value.

(4) The taxable value for all property in class one and classes seven through eighteen is the percentage of market value established for each class of property in 84-301.2 and 84-301.8 through 84-301.19.

(5) The assessed value of properties in 84-301.3 through 84-301.7 [and 84-301.20] is as follows:

(a) Property in 84-301.6, under class five, is assessed at 100% of book value, by the method established in 84-301.6 and the sections cited therein.

(b) Properties in 84-301.3, under class two, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 84-5403.

(c) Properties in 84-301.4, 84-301.5, and 84-301.20, under classes three, four, and nineteen are assessed at 100% of the annual gross proceeds.

(d) Properties in 84-301.7, under class six, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 84-437.2 are valued as agricultural lands for tax purposes.

(6) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(7) The taxable value of all property in classes two through six [and nineteen] is the percentage of assessed value established in 84-301.3 through 84-301.7 [and 84-301.20] for each class of property.

History: En. Sec. 5, p. 76, L. 1891; re-en. Sec. 3690, Pol. C. 1895; re-en. Sec. 2502, Rev. C. 1907; re-en. Sec. 2001, R. C. M. 1921; amd. Sec. 2, Ch. 512, L. 1973; amd. Sec. 1, Ch. 56, L. 1974; amd. Sec. 1, Ch. 209, L. 1975; amd. Sec. 1, Ch. 436, L. 1975; amd. Sec. 5, Ch. 498, L. 1977; amd. Sec. 21, Ch. 566, L. 1977. Cal. Pol. C. Sec. 3627.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 498 and once by Ch. 566. The code commission has directed that the section be set forth as amended by Ch. 566.

Amendments

The 1973 amendment inserted the exception relating to agricultural lands at the end of the first sentence.

The 1974 amendment deleted "and shall be so valued unless a different use is demonstrated" from the end of the first sentence and inserted the second sentence.

Chapter 209, Laws of 1975, substituted the present language through the first sentence of subdivision (2) for "All taxable property must be assessed at its full cash value except the assessment of agricultural lands shall be based upon the productive capacity of the lands when valued for agricultural purposes"; and added the last paragraph of the section relating to determination of taxable value.

Chapter 436, Laws of 1975, substituted the third sentence of subdivision (2) for "Land and the improvements thereon must be separately assessed."

Chapter 498, Laws of 1977, inserted "and gross proceeds of metal mines" near the beginning of the section; and made minor changes in phraseology, punctuation and style.

Chapter 566, Laws of 1977, rewrote the section which read: "All taxable real property and improvements must be assessed at forty per cent (40%) of its full cash value except:

"(1) Properties in section 84-301, under Class One, shall be assessed at one hundred per cent (100%) of full cash value.

"(2) The assessment of agricultural lands shall be based upon the productive capacity of the lands when valued for agricultural purposes. All lands shall be valued as agricultural lands for tax purposes that meet the qualifications of section 84-437.2, R. C. M. 1947. Land and improvements thereon shall be separately assessed when any of the following conditions occur:

"(a) when ownership of the improvements is different from ownership of the land,

"(b) when requested in writing by the taxpayer, or

"(c) when the land is outside an incorporated city or town.

"The taxable value of all property shall be determined by sections 84-301 and 84-308."

84-402. (2001.1) **County assessor to be agent of the department of revenue.** (1) The county assessors of the various counties of the state of Montana are agents of the department of revenue for the purpose of locating and providing the department a description of all taxable property within the county together with other pertinent information and for the purpose of performing such other administrative duties as are required for placing taxable property on the assessment roles. The assessors shall perform such other duties as are required by law, not in conflict with the provisions of this subsection.

(2) The department of revenue shall have full charge of assessing all property subject to taxation and equalizing values and shall secure such personnel as is necessary to properly perform its duties.

(3) The salary of the county assessor shall be the same amount as provided by law for the salary of the county clerk and recorder; deputy assessors' salaries shall be the same as paid the deputy clerk and recorder.

(4) The county commissioners of the various counties shall provide existing office space in the county courthouse for use by the county assessor, his deputies and staff, and the state appraiser and staff, if such space is reasonably available. If such space is not reasonably available in the courthouse and the same must be contracted for, the department shall pay the cost thereof. Additional personal property required by the department for the assessor to perform his duties as agent of the department shall be provided by the department.

History: En. Sec. 1, Ch. 61, L. 1925; amd. Sec. 1, Ch. 100, L. 1939; amd. Sec. 2, Ch. 405, L. 1973; amd. Sec. 49, Ch. 566, L. 1977.

Amendments

The 1973 amendment designated the language in the former section as subsection (1); substituted "state department of revenue or its agents" for "county assessors" in subsection (1); made a minor change in phraseology; and added subsections (2) through (5).

The 1977 amendment deleted a former subsection (1) which concerned the assignment of property to percentage classes for computation of taxable value; redesignated subsections (2) through (5) as subsections (1) through (4); substituted "assessing" in subsection (2) for "appraising"; and made minor changes in phraseology and punctuation.

84-403. (2001.2) **Appeal for taxpayer aggrieved at percentage assignment.** If any taxpayer shall feel aggrieved at the percentage assignment so made by the department of revenue or its agent, he shall have the right to appeal to the county tax appeal board, on the percentage assignment the same as he now has on valuations, and also, the right to appeal from the county tax appeal board to the state tax appeal board, whose findings shall be final except as to, the right of review in the proper courts.

History: En. Sec. 2, Ch. 61, L. 1925; amd. Sec. 3, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor"; and substituted references to the county and state tax appeal boards for references to the corresponding boards of equalization.

84-404. (2001.3) **Department of revenue to assign percentage basis—when.** The percentage basis of assessed value as provided for in 84-301.2 through 84-301.19 [84-103.21] is determined and assigned by the department of revenue when it makes its annual assessment of the property which it is required to assess centrally under the laws of this state. The department shall transmit such determination and assignment to its agents in the various counties with the assessments so made, and its determination is final except as to the right of review in the state tax appeal board or the proper court.

History: En. Sec. 3, Ch. 61, L. 1925; amd. Sec. 49, Ch. 100, L. 1973; amd. Sec. 2, Ch. 516, L. 1973; amd. Sec. 8, Ch. 98, L. 1977; amd. Sec. 50, Ch. 566, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 98 and once by Ch. 566. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 100, Laws of 1973, deleted "the constitution or" before "the laws of this state" near the middle of the section.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization."

Chapter 98, Laws of 1977, inserted "centrally" near the end of the first sentence; substituted "its agents in the various counties" in the second sentence for "the various county clerks"; inserted "state tax appeal board or the" near the end of the section; and made minor changes in phraseology, punctuation and style.

Chapter 566, Laws of 1977, substituted "assessed value as provided for in 84-301.2 through 84-301.19" in the first sentence for "true and full value as provided for in section 84-302"; inserted "centrally" near the end of the first sentence; and made minor changes in phraseology, punctuation and style.

Flathead Reservation Indians

This section is invalid in so far as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, — US —, 48 L Ed 2d 96, 96 S Ct 1634, affirming 392 F Supp 1325.

84-405. (2001.5) **Assessor's blanks and rolls to be provided by state department of revenue.** It shall be made the duty of the state department of revenue to prescribe such forms of assessment blanks and assessor's rolls as will comply with the above provisions, grouping all the same percentage class as nearly as possible in one group on blanks and assessor's roll.

History: En. Sec. 5, Ch. 61, L. 1925; amd. Sec. 3, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-406. (2002) **General assessment day.** (1) The department of revenue or its agent must, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property in each county subject to taxation. The department or its agent must assess property to the person by whom it was owned or claimed or in whose possession or control it was at 12 midnight of January 1 next preceding. It must also ascertain and assess all mobile homes arriving in the county after 12 midnight of January 1 next preceding.

(2) The procedure provided by this section may not apply to:

(a) motor vehicles that are required by subsection (4) to be assessed on January 1 or upon their anniversary registration date. No mistake in the name of the owner or supposed owner of real property, however, renders the assessment invalid.

(b) livestock which are required by 84-5201.4 to be assessed on an average inventory basis in each county;

(c) property defined in 53-642 as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate;

(d) mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade; and

(e) snowmobiles that are required by subsection (5) to be assessed as of July 1.

(3) Credits must be assessed as provided in 84-101, subsection (5).

(4) (a) The department or its agent must ascertain and assess all motor vehicles except mobile homes in each county subject to taxation as of January 1 or as of the anniversary registration date of those vehicles subject to 53-154 through 53-162, in each year. The motor vehicles shall be

assessed to the persons by whom owned or claimed or in whose possession or control they were at 12 midnight of January 1 or the anniversary registration date thereof, whichever is applicable, in each year. A camper which is customarily attached to a motor vehicle shall be assessed at the time the vehicle is assessed. No tax may be assessed against motor vehicles that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles brought into the state subsequent to January 1 as motor vehicle dealers' inventories shall be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers. "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles, except as otherwise provided by 32-3315. Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall be assessed at market value as of January 1.

(b) The applicant for registration or reregistration of a motor vehicle, other than a mobile home, is not relieved of the duty of paying taxes if the taxes have not been paid by a prior applicant or owner in all cases where taxes were required to be paid.

(5) The department of revenue or its agent must assess all snowmobiles in each county subject to taxation as of July 1 in each year. A snowmobile shall be assessed to the person by whom owned or claimed or in whose possession or control it was at 12 midnight of July 1 in each year, except snowmobiles in the inventory of dealers which shall be assessed to the dealers as of 12 midnight of January 1 in each year.

History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R. C. M. 1921; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967; amd. Sec. 1, Ch. 40, L. 1969; amd. Sec. 1, Ch. 180, L. 1969; amd. Sec. 6, Ch. 435, L. 1971; amd. Sec. 4, Ch. 405, L. 1973; amd. Sec. 5, Ch. 414, L. 1973; amd. Sec. 10, Ch. 74, L. 1975; amd. Sec. 2, Ch. 327, L. 1975; amd. Sec. 8, Ch. 388, L. 1975; amd. Sec. 2, Ch. 507, L. 1975; amd. Sec. 3, Ch. 126, L. 1977; amd. Sec. 2, Ch. 211, L. 1977; amd. Sec. 5, Ch. 260, L. 1977; amd. Sec. 51, Ch. 566, L. 1977. Cal. Pol. C. Sec. 3628.

Compiler's Notes

This section was amended four times in 1977 by Chs. 126, 211, 260, and 566. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

The 1967, 1969, 1971, 1973 and 1975 amendments made various changes in this section.

Prior to the 1977 amendments this section read "(1) The department of revenue or its agent must, between the first day of January and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in each county subject to taxation, except such as is required to be assessed by the state department of revenue, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at 12 midnight of the first day of January next preceding. It must also ascertain and assess all mobile homes arriving in the county after 12 midnight of the first day of January next preceding. The procedure provided by this section shall not apply to:

"(a) Motor vehicles which are required by subdivision (2) hereof to be assessed as of the first day of January, or upon their anniversary registration date; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid.

"(b) Livestock which are required by subdivision (3) of this section to be assessed on an average inventory basis in each county. Credits must be assessed as provided in section 84-101, subdivision 6.

"(c) Property defined in section 53-642 as "special mobile equipment" which is subject to assessment of personal proper-

ty taxes on the date that application is made for a special mobile equipment plate.

"(d) Mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

"(e) Campers which are required by subdivision 4 hereof to be assessed as of the first day of January.

"(f) Snowmobiles which are required by subdivision 5 hereof to be assessed as of the first day of July.

"(2) The department or its agent must ascertain and assess all motor vehicles, except mobile homes, in each county subject to taxation as of January 1, or as of the anniversary registration date of those vehicles subject to sections 53-154 through 53-162, in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at 12 midnight of the first day of January or the anniversary registration date thereof, whichever is applicable, in each year. Provided that such tax shall not be assessed against motor vehicles which constitute inventory of motor vehicle dealers as of January 1, but said vehicles, and all other motor vehicles brought into the state subsequent to January 1, as motor vehicle dealer's inventory, shall be assessed to their respective purchasers as of the dates said vehicles are registered by said purchasers, and purchasers means and includes dealers who apply for registration or re-registration of motor vehicles, except as otherwise provided by section 32-3315. Goods, wares and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall be assessed at full and true value as of the first day of January.

"Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home, nothing herein contained shall relieve the applicant for registration or re-registration of any other motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

"(3) The assessed value of livestock in each county on the assessment date shall be computed by adding the assessed value of all livestock more than nine (9) months of age owned by the taxpayer in each county on the last day of each month since the last assessment date and dividing the sum by twelve (12). For purposes of this subdivision "livestock" means cattle, sheep, horses, and mules.

"(4) The department of revenue or its agent must ascertain and assess all campers in each county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such camper was, including dealers, at 12 midnight of the first day of January in each year.

"(5) The department of revenue or its agent must ascertain and assess all snowmobiles in each county subject to taxation as of July 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such snowmobile was at 12 midnight on the first day of July in each year; provided, however, that snowmobiles which constitute inventory of snowmobile dealers shall be assessed to the dealers as of 12 midnight of the first day of January in each year; and further provided that all snowmobiles that have been assessed and for which taxes have been paid for the period of January 1, 1975 through December 31, 1975, shall be assessed for only six (6) months during the period July 1, 1975 through June 30, 1976."

Effective Dates

Section 3 of Ch. 232, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 1, 1967.

Section 2 of Ch. 40, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 19, 1969.

Section 2 of Ch. 180, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

Section 7 of Ch. 435, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

Section 6 of Ch. 414, Laws 1973 read "This act is effective for the tax year 1974 and thereafter."

Deadline for Assessment

The county commissioners have a clear legal duty under section 25-609.1 to compute the taxable valuation of a county prior to the first day of July, even though the second Monday in July is the deadline for reporting their computations to the state department of revenue. Brown v. Board of County Comrs. of Gallatin County, — M —, 529 P 2d 358.

Flathead Reservation Indians

This section is invalid in so far as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish

and Kootenai Tribes, — US —, 48 L Ed 2d 96, 96 S Ct 1634, affirming 392 F Supp 1325.

References

Swartz v. Berg, 147 M 178, 411 P 2d 736.

84-409. (2003) **Statement—what to contain.** The department of revenue or its agent must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control at twelve o'clock midnight on the first day in January. Such statement must be in writing, showing separately:

1 to 7. * * * [Same as parent volume.]

The fact that such statement is not required, or that a person has not made such statement under oath, or otherwise, does not relieve his property from taxation.

History: En. Sec. 14, p. 78, L. 1891; amd. Sec. 3701, Pol. C. 1895; re-en. Sec. 2511, Rev. C. 1907; re-en. Sec. 2003, R. C. M. 1921; amd. Sec. 5, Ch. 405, L. 1973; amd. Sec. 9, Ch. 388, L. 1975. Cal. Pol. C. Sec. 3629.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor" at the beginning of the section.

The 1975 amendment substituted "twelve o'clock midnight on the first day in January" for "twelve o'clock m. on the first Monday in March."

Flathead Reservation Indians

This section is invalid in so far as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, — US —, 48 L Ed 2d 96, 96 S Ct 1634, affirming 392 F Supp 1325.

84-410. (2004) **Department of revenue to furnish blanks, etc.** The department of revenue must furnish its agents with blank forms of the statements provided for in the preceding section, affixing thereto an affidavit, which must be substantially as follows: "I, ..., do swear that I am a resident of the county of ..... (naming it), and that my post-office address is .....; that the above list contains a full and correct statement of all property subject to taxation, which I, or any firm of which I am a member, or any corporation, association, or company of which I am president, cashier, secretary, or managing agent, owned, claimed, possessed, or controlled at twelve o'clock midnight on the first day of January last, and which is not already assessed this year; and that I have not in any manner whatsoever transferred or disposed of any property, or placed any property out of said county or my possession for the purpose of avoiding any assessment upon the same, or of making this statement; and that the debts therein stated as owing by me are justly due and owing to others." The affidavit to the statement on behalf of a firm or corporation must state the principal place of business of the firm or corporation, and in other respects must conform substantially to the preceding form. The time when taxes become delinquent, and the time of the meeting of the county tax appeal board, must be stated in such form.

History: En. Sec. 15, p. 80, L. 1891; re-en. Sec. 3702, Pol. C. 1895; re-en. Sec. 2512, Rev. C. 1907; re-en. Sec. 2004, R. C. M. 1921; amd. Sec. 6, Ch. 405, L. 1973; amd. Sec. 10, Ch. 388, L. 1975. Cal. Pol. C. Sec. 3630.

Amendments

The 1973 amendment substituted "department of revenue" and "its agents" near the beginning of the section for "board of county commissioners" and "the assessor"; and substituted "tax appeal

board" in the final sentence for "board of equalization."

The 1975 amendment substituted "twelve o'clock midnight on the first day of January last" for "twelve o'clock m. on the first Monday in March, last."

84-411. (2005) **Statement to be filled out and returned to agent of the department of revenue.** The agent of the department of revenue may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out. The agent must either in person or by mail deliver to the person making the statement a copy of the same, showing any corrections made thereto by the agent.

History: En. Sec. 16, p. 80, L. 1891; re-en. Sec. 3703, Pol. C. 1895; re-en. Sec. 2513, Rev. C. 1907; re-en. Sec. 2005, R. C. M. 1921; amd. Sec. 7, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3631.

Amendments

The 1973 amendment substituted references to the agent of the department of revenue for references to the county assessor.

84-412. (2006) **General powers of department of revenue.** The department of revenue has power:

1. To require any person in the state to make and subscribe an affidavit, giving his name and place of residence and post-office address.

2. To subpoena and examine any person in relation to any statement furnished to it, or which discloses property which is assessable in the state; and it may exercise this power in any county where the person whom it desires to examine may be found, but has no power to require such persons to appear before it in any other county than that in which the subpoena is served. Every person who refuses to furnish the statement hereinbefore required, or to make and subscribe such affidavit respecting his name and place of residence, or to appear and testify when requested so to do by the department, as above provided, for each and every refusal, and as often as the same is repeated, forfeits to the people of the state the sum of one hundred dollars, to be recovered by action brought in the name of the state in any police or justice's court. In case such affidavit shows the residence of the person making the same to be in any county other than that in which it is taken, or the statement discloses property in any county other than that in which it is made, the department must, in the respective case, file the affidavit or statement in its office, and transmit a copy of the same, certified by it, to its agent in the county in which such residence or property is therein shown to be. All moneys recovered under the provisions of this section must be paid into the treasury of the county in which the property is located.

History: En. Sec. 17, p. 81, L. 1891; re-en. Sec. 3704, Pol. C. 1895; re-en. Sec. 2514, Rev. C. 1907; re-en. Sec. 2006, R. C. M. 1921; amd. Sec. 8, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3632.

Amendments

The 1973 amendment substituted references to the state department of revenue and its agent for references to the county assessor; substituted references to the state for references to the county; substituted "the treasury of the county in which the property is located" for "the treasury of his county" at the end of the section; and made minor changes in phraseology.

84-413. (2007) **Method of making assessment upon refusal of statement.** If any person, after demand made by the department of revenue,

neglects or refuses to give, under oath, the statement herein provided for, or to comply with the other requirements of this title, the department must note the refusal on the assessment book opposite his name, and must make an estimate of the value of the property of such person, and the value so fixed by the department must not be reduced by the county tax appeal board.

History: En. Sec. 18, p. 82, L. 1891; amd. Sec. 3705, Pol. C. 1895; re-en. Sec. 2515, Rev. C. 1907; re-en. Sec. 2007, R. C. M. 1921; amd. Sec. 9, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3633.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the county assessor; and substituted "county tax appeal board" for "board of county commissioners" at the end of the section.

84-414. (2008) **Assessment of unknown or absent owners.** If the owner or claimant of any property, not listed by another person, is absent or unknown, the department must make an estimate of the value of such property.

History: En. Sec. 19, p. 82, L. 1891; re-en. Sec. 3706, Pol. C. 1895; re-en. Sec. 2516, Rev. C. 1907; re-en. Sec. 2008, R. C. M. 1921; amd. Sec. 10, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3635.

Amendments

The 1973 amendment substituted "department" for "assessor."

84-415. (2009) **Assessment of unknown or absent owners—in whose name property to be assessed.** If the name of the absent owner is known to the department, the property must be assessed in his name; if unknown, the property must be assessed to unknown owners.

History: En. Sec. 20, p. 82, L. 1891; re-en. Sec. 3707, Pol. C. 1895; re-en. Sec. 2517, Rev. C. 1907; re-en. Sec. 2009, R. C. M. 1921; amd. Sec. 11, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3636.

Amendments

The 1973 amendment substituted "department" for "assessor."

84-422.1. Assessment of business inventories. For property tax purposes, business inventories shall be assessed at the cost or present value, whichever is lower, to the person subject to the inventory tax.

History: En. 84-422.1 by Sec. 1, Ch. 182, L. 1977.

Title of Act

An act to define the basis of assessment of business inventories.

84-422.2. Statement of purpose. The purpose of 84-422.2 and 84-422.3 is to reduce the paperwork burden imposed by government on the businessman by permitting the use of federal tax inventory reporting forms for the Montana property tax business inventory reports. The report to the assessor shall continue to be made as of each January 1. Thus, if the taxpayer is an individual proprietor filing on a calendar year basis, the schedule C form attached to his form 1040 will also be his property tax inventory report. However, if the taxpayer's taxable year ends on a date other than December 31, he will send the assessor a copy of the last preceding federal schedule he filed.

History: En. 84-422.2 by Sec. 1, Ch. 255, L. 1977.

Title of Act

An act to allow business inventories to be reported for property tax purposes as they are reported to the Internal Revenue Service.

84-422.3. Business inventory reporting—copy of federal schedule. For the purposes of 84-409, a person required to report his business inventory as of January 1 to the department of revenue may satisfy this requirement by submitting a copy of the schedule he filed with the internal revenue service as of that day if the person reports his federal income taxes on a calendar year basis or a copy of the schedule he filed with the internal revenue service as of a date within the preceding year if the person reports his federal income taxes on other than a calendar year basis. In the latter instance, the business inventory indicated on the federal schedule shall be presumed to be the business inventory in the possession on January 1 of the person reporting it.

History: En. 84-422.3 by Sec. 2, Ch. 255, L. 1977.

84-427. (2021) **Assessment of railroads, telegraph, telephone and electric light lines.** Railroads operated or situated in one county, telegraph, telephone, and electric light lines and similar properties situated in one county, and their franchises; canals, ditches, and flumes, situated in one county and the franchises of the same, must be listed and assessed in the county in which such property is located, and the department of revenue must require the owner of such property, or his agent, or any officer of a corporation owning the same, to make a verified statement containing a list of the number of miles such property is operated or situated in the county, and the value thereof.

History: En. Sec. 30, p. 83, L. 1891; re-en. Sec. 3719, Pol. C. 1895; re-en. Sec. 2529, Rev. C. 1907; amd. Sec. 1, Ch. 24, L. 1921; re-en. Sec. 2021, R. C. M. 1921; amd. Sec. 12, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "and not assessed by the state board of equalization" following "Railroads operated or situated in one county" at the beginning of the section; and substituted "department of revenue" for "assessor."

84-428. (2022) **Railroads—how assessed.** The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this state must be assessed by the state department of revenue as hereinafter provided. Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business.

History: En. Sec. 11, p. 76, L. 1891; re-en. Sec. 3696, Pol. C. 1895; re-en. Sec. 2508, Rev. C. 1907; re-en. Sec. 2022, R. C. M. 1921; amd. Sec. 4, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3628.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the first sentence.

84-429. (2023) **Land—how assessed.** All other taxable property must be assessed in the county, city, or district in which it is situated. Land

must be assessed in parcels or subdivisions not exceeding six hundred and forty acres, and tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States government, must be assessed by sections or fractions of sections.

The department of revenue or its agent must set aside one line in the assessment book for the description of each six hundred and forty acres of land, or less, the number of acres to be entered in one column, the description in another column, value in another column, value of improvements in another column, and the total in the total column. It must also set aside a line in the assessment book for the description of each town or city lot, the description to be entered in one column, and the value of the lot and any improvements thereon in another column, except that a lot and improvements thereon shall be separately assessed when required under section 84-401, R. C. M. 1947; provided, that all of the unimproved lots of the same value, situate in one block, or belonging to the same party, may be described and assessed in one line in the manner above provided for each lot. It is the intention hereby that each parcel and lot show in its own line, and opposite the description thereof, the total value of the same and any improvements thereon.

History: En. Sec. 12, p. 77, L. 1891; re-en. Sec. 3697, Pol. C. 1895; re-en. Sec. 2509, Rev. C. 1907; re-en. Sec. 2023, R. C. M. 1921; amd. Sec. 13, Ch. 405, L. 1973; amd. Sec. 2, Ch. 436, L. 1975. Cal. Pol. C. Sec. 3628.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the assessor.

The 1975 amendment substituted in the second sentence of the second paragraph "and the value of the lot and any improvements thereon in another column, except that a lot and improvements thereon shall be separately assessed when required under section 84-401, R. C. M. 1947" for "the value in another column on the same line, the value of improvements in another column, and the total in the total column"; and substituted at the end of the second paragraph "the total value of the same and any improvements thereon" for "the separate value of the same and the value of the improvements thereon."

84-429.7. Classification and appraisal—duties of the department of revenue. (1) It is hereby made the duty of the state department of revenue to accomplish the following:

a. The classification of all taxable lands.

b. The appraisal of all taxable city and town lots.

c. The appraisal of all taxable rural and urban improvements.

A record thereof must be kept upon such maps, plats and forms, and entered in such books of record as may be prescribed by the state department of revenue. Such maps, plats, forms and books of record shall be official records of the state. A certified copy of all such records as may be desired shall be furnished to the state department of revenue.

It shall be the duty of the state department of revenue to maintain current, the classification of all taxable lands and appraisal of city and town lots, and rural and urban improvements, as provided for herein.

(2) The department shall continue to assess, without consideration of any increase in productivity resulting from the introduction of an irrigation system, at the current rate all nonirrigated farm land and nonirrigated continuously cropped farm land for a period of three (3) years after introduction to the land of an irrigation system.

The records of this assessment shall be maintained in the office of the agent of the department in each county of this state and a copy sent to the department.

History: En. Sec. 1, Ch. 191, L. 1957; amd. Sec. 14, Ch. 405, L. 1973; amd. Sec. 1, Ch. 353, L. 1975; amd. Sec. 1, Ch. 123, L. 1977.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the board of county commissioners and state board of equalization; deleted "in such manner as the state board of equalization may direct" from the preliminary clause; substituted "state" for "county" at the end of the second sentence after the lettered clauses; deleted "and the state board of equalization shall provide for the payment to the several counties of the cost of preparing such copy of the record so provided for, as they may require" at the end of the paragraph following the lettered clauses; and deleted "After compliance with the other provisions of this act" from the beginning of the last paragraph in subsection (1).

The 1975 amendment inserted the subsection (1) designation; and added subsection (2).

The 1977 amendment substituted "an irrigation system" for "a sprinkler type irrigation system" twice in the first paragraph of subsection (2).

Separability Clause

Section 2 of Ch. 353, Laws 1975 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from invalid applications."

Jurisdiction of District Court

District court acted beyond its jurisdiction by enjoining board of equalization from revising, grading and valuation of nonirrigated farm land pursuant to this section. State ex rel. Lord v. District Court, 154 M 269, 463 P 2d 323.

84-429.8. Repealed.

Repeal

Section 84-429.8 (Sec. 2, Ch. 191, L. 1957; Sec. 1, Ch. 23, L. 1965; Sec. 15, Ch. 405, L. 1973), relating to establishment of the "property tax administration fund" and the tax levy therefor, was repealed by Sec. 1, Ch. 141, Laws of 1974, effective March 11, 1974, and affecting taxes levied and assessed after January 1, 1974.

84-429.9. Assessments to be made on classification and appraisal. The assessments of all lands, city and town lots, and all improvements must be made on the classification and appraisal as made or caused to be made by the department of revenue.

History: En. Sec. 3, Ch. 191, L. 1957; amd. Sec. 16, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "must be made" after "improvements" for "The county assessor must base" at the beginning of the section; inserted "or caused to be made" near the end of the section; and substituted "department of revenue" for "board of county commissioners" at the end of the section.

84-429.10. Repealed.

Repeal

Section 84-429.10 (Sec. 4, Ch. 191, L. 1957), relating to initiation of the classification and appraisal, was repealed by Sec. 120, Ch. 405, Laws 1973.

84-429.11. Notice of classification and appraisal to owners—appeals. It shall be the duty of the department of revenue to cause to be mailed to each owner a notice of the classification of the land owned by him and the appraisal of the improvements thereon. If the owner of any land and improvements be dissatisfied with the classification of his land or the appraisal of the improvements the department of revenue shall give rea-

sonable notice to such taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing and thereafter the department of revenue shall determine the true and correct classification of such land or appraisal of such improvements and forthwith notify the taxpayer of their determination and when so determined the land shall be classified and improvements appraised in the manner ordered by the department of revenue. If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the department of revenue he shall have the right to appeal to the county tax appeal board and then to the state tax appeal board whose findings shall be final subject to the right of review in the proper court or courts.

History: En. Sec. 5, Ch. 191, L. 1957; amd. Sec. 17, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the board of county commissioners; and substituted "county tax appeal board and then to the state tax appeal board" for "state board of equalization" in the final sentence.

State Directives

Boards of county commissioners could not ignore directives of state board of equalization on subject of timberland valuation and make their own valuation on theory that state board's directives were invalid because not supported by evidence since validity would have to be adjudicated and since, in any event, county boards do not have power of increasing valuations. State ex rel. Conrad v. Managhan, 157 M 335, 485 P 2d 948.

Summary Judgment

In declaratory judgment action in which notice of reclassification was found not to comply with this section, district court did not abuse its discretion in granting plaintiff-landowners' motion for summary judgment without considering further issues raised by plaintiffs since they lacked standing as to those issues. Mittelstadt v. Buckingham, 156 M 407, 480 P 2d 831.

84-429.12. Classification and appraisal—general and uniform methods. It is hereby made the duty of the state department of revenue to implement the provisions of this act by providing:

1. For a general and uniform method of classifying lands in the state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes.

All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information. All lands must be classified by forty (40) acre tracts or fractional lots.

All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

2 to 4. * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 191, L. 1957; amd. Sec. 3, Ch. 512, L. 1973; amd. Sec. 5, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 512 and once by Ch. 516. Chapter 512 made the same changes as did Ch. 516 and made another change as well. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 512, Laws of 1973, substituted "department of revenue" for "board of county commissioners" in the preliminary

clause; and added the third paragraph to subsection 1.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" in the preliminary clause.

Basis for Assessment

County board of equalization properly assessed plaintiff's property on basis of "market value" rather than on basis of agricultural land, even though it was being used for agricultural purposes, where property was within commercial area and its value was much greater than that assigned to agricultural property. Mohland v. State Board of Equalization, 155 M 49, 466 P 2d 582, certiorari denied, 400 US 940, 91 S Ct 232.

Board Authority

County board of equalization possesses jurisdiction and authority to direct and sanction classification, appraisal and assessment of rural and urban improvements using "market value" as basis and classifying them according to use or uses other than those to which such land is actually devoted. Mohland v. State Board of Equalization, 155 M 49, 466 P 2d 582, certiorari denied, 400 US 940, 91 S Ct 232.

Boards of county commissioners cannot ignore directives of state board of equalization on subject of timberland valuation and make their own valuation on theory that state board's directives were invalid because not supported by evidence since validity would have to be adjudicated and since, in any event, county boards do not have power of increasing valuations. State ex rel. Conrad v. Managhan, 157 M 335, 485 P 2d 948.

Unlawful Appraisal

The absence of a state-wide uniform appraisal plan prevents lawful implementation of appraisal made by professional appraisers employing different methods than those formulated by the state. Larson v. State, — M —, 534 P 2d 854.

Property appraisal plan calling for cyclical re-evaluation of property every five years, which established differing cycles for each county in the state, was not thereby unconstitutional or unlawful for failure to provide a uniform statewide method of appraisal, since the plan merely took into account the varying lengths of time since the last appraisal of various kinds of property in the different counties; though implementation of the plan might result in some inequality, no violation of the constitution or applicable statutes would result unless there was intentional or systematic discrimination, constructive fraud, or arbitrary action. Patterson v. State, Department of Revenue, — M —, 557 P 2d 798.

84-429.14. Periodic revaluation of taxable property. The department of revenue shall administer and supervise a program for the revaluation of all taxable property within the state of Montana at least every five (5) years. A comprehensive written plan of rotation shall be promulgated by the department of revenue fixing the order of revaluation of property in each county on the basis of the last revaluation of taxable property in each county prior to July 1, 1974, in order to adjust the disparities therein between the counties. The plan of rotation so adopted shall provide that all property in each county shall be revalued at least every five (5) years or that no less than twenty per cent (20%) of the property in each county shall be revalued in each year. The department of revenue shall furnish a copy of the plan and all amendments thereto to each county assessor and the board of county commissioners in each county.

History: En. 84-429.14 by Sec. 1, Ch. 294, L. 1975.

Title of Act

An act to provide for a cyclical program for the revaluation of taxable property.

Method of Appraisal

Property appraisal plan calling for cyclical re-evaluation of property every five years, which established differing cycles for each county in the state, was not thereby unconstitutional or unlawful for failure to provide a uniform state-wide method of appraisal, since the plan merely took into account the varying lengths of time since the last appraisal of various kinds of property in the different counties; though implementation of the plan might result in some inequality, no violation of the constitution or applicable statutes would result unless there was intentional or systematic discrimination, constructive fraud, or arbitrary action. Patterson v. State, Department of Revenue, — M —, 557 P 2d 798.

84-429.15. Equalization of valuations. The same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided.

History: En. 84-429.15 by Sec. 2, Ch. 294, L. 1975.

84-429.16. Use of valuations. No program for the revaluation of property shall be implemented for taxation in any county, other than as prescribed in this act.

History: En. 84-429.16 by Sec. 3, Ch. 294, L. 1975.

84-429.17. Act supplemental. This act is intended to be supplementary to and is not intended to repeal section 84-429.12, R. C. M. 1947.

History: En. 84-429.17 by Sec. 4, Ch. 294, L. 1975.

Separability Clause

Section 5 of Ch. 294, Laws 1975 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications the part remains in effect in all valid applications that are severable from the invalid applications."

84-437.1. Legislative intent as to agricultural property. Since the market value of many farm properties is based upon speculative purchases which do not reflect the productive capability of farms, it is the legislative intent that bona fide farm properties shall be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

History: En. Sec. 1, Ch. 512, L. 1973.

Title of Act

An act to provide that agricultural land shall be classified, appraised, and assessed according to its value for agricultural purposes without regard to the value it may have for other purposes; and defining agricultural lands, establishing procedure and providing a penalty; amending sections 84-401 and 84-429.12, R. C. M. 1947.

84-437.2. Eligibility of land for valuation as agricultural. (1) Land which is actively devoted to agricultural use shall be eligible for valuation, assessment and taxation as herein provided each year it meets either of the following qualifications:

(a) The area of such land is not less than five (5) contiguous acres when measured in accordance with provisions of section 84-437.6, R. C. M. 1947, and it has been actively devoted to agriculture during the last growing season and it continues to be actively devoted to agricultural use which means;

(i) it is used to produce field crops including, but not limited to, grains, feed crops, fruits, vegetables; or

(ii) it is used for grazing; or

(iii) it is in a crop-land retirement program; or

(b) It agriculturally produces for sale or home consumption the equivalent of fifteen per cent (15%) or more of the owners' annual gross income regardless of the number of contiguous acres in the ownership.

(2) Land shall not be classified or valued as agricultural if it is subdivided with stated restrictions prohibiting its use for agricultural purposes.

(3) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise shall not be considered a bona fide agricultural operation.

History: En. Sec. 4, Ch. 512, L. 1973; amd. Sec. 2, Ch. 56, L. 1974; amd. Sec. 1, Ch. 457, L. 1975.

Amendments

The 1974 amendment inserted "any of" following "it meets" in the introductory phrase; expanded subdivision (1) which read: "It is being actively devoted to agriculture"; substituted "value of grazing or crops produced for sale or home consumption" for "value of grazing and field crops" in subdivision (2); inserted "for sale or home consumption" in subdivision (3); and deleted a subdivision pertaining to the application by the owner of land for valuation as agricultural.

The 1975 amendment designated the first paragraph as subsection (1); redesignated former subdivision (1) as subdivision (1)(a); substituted present subdivision (1)(a) for "It is being actively devoted to agriculture or it has been historically devoted to agricultural use and it has been valued and assessed as agricultural land for the taxable years 1971, 1972 and 1973 and it continues to be devoted to agricultural use which means"; redesignated former subdivisions (a) to (c) as (i) to (iii) of subdivision (1)(a); in subdivision (i) inserted "field" before "crops"; deleted a former subsection (2) which read "The area of such land is not less than five (5) contiguous acres when measured in accordance with the provisions of section 8, [84-437.6], when the gross value of grazing or crops produced for sale or home consumption thereon together with any payments received under a crop-land retirement program totals at least one thousand ($1,000) per year; or"; redesignated former subdivision (3) as subdivision (1)(b); added "regardless of the number of contiguous acres in the ownership" at the end of subdivision (1)(b); added subsections (2) and (3); and made minor changes in phraseology.

84-437.3. Agricultural uses only considered in valuation. In valuing land as agricultural, the department of revenue, shall consider only those indicia of value which such land has for agricultural use.

History: En. Sec. 5, Ch. 512, L. 1973; amd. Sec. 3, Ch. 56, L. 1974.

Amendments

The 1974 amendment substituted "In valuing land as agricultural" for "In classifying land which qualifies as land actively devoted to agricultural use under the test prescribed by this act, and as to which the owner thereof has made timely application for valuation, assessment and taxation hereunder for the tax year in issue" at the beginning of the section.

84-437.4. Roll-back tax—computation. When land which is or has been in agricultural use and is or has been valued, assessed and taxed under the provisions of this act, is applied to a use other than agricultural, it shall be subject to an additional tax hereinafter referred to as the "roll-back tax," which tax shall be a lien upon the land and become due and payable at the time of the change in use.

As used in this act, the word "roll-back" means the period preceding the change in use of the land not to exceed four (4) years during which the land was valued, assessed and taxed under the provisions of this act.

The assessor shall ascertain the following in determining the amount of the roll-back tax chargeable on land which has undergone a change in use:

(1) the full and fair value of the land as determined by the department of revenue under the valuation standard applicable to land in the county not valued, assessed and taxed under the provisions of this act;

(2) the amount of the land assessment as unsubdivided and un-

improved land for the period of the roll-back, by multiplying such full and fair market value by the number of years included in the roll-back and by multiplying the product obtained, by the assessment ratio in effect in the year in which the change in use of the land is made as determined by the state;

(3) the average mill levy applied in the taxing district in which the land is located by dividing the aggregate mill levy actually applied in each respective year of the roll-back by the number of years, included in the roll-back; and

(4) the amount of the roll-back tax by multiplying the taxable value computed from the amount of the assessment determined under subsection (2) hereof by the average mill levy determined under subsection (3) hereof, less the amount of real property taxes actually paid during the period of the roll-back.

History: En. Sec. 6, Ch. 512, L. 1973.

84-437.5. Roll-back tax procedures governed by nonagricultural provisions. The assessment of the roll-back tax imposed by 84-437.4, the attachment of the lien for such taxes, and the right of the owner or other interested party to review any judgment of the department of revenue or local tax appeal board affecting such roll-back tax shall be governed by the procedures provided for the assessment and taxation of real property not valued, assessed, and taxed under the provisions of this act. The roll-back tax collected shall be paid into the county treasury and paid by the treasurer to the various taxing units pro rata in accordance with the levies for the current year.

History: En. Sec. 7, Ch. 512, L. 1973; amd. Sec. 4, Ch. 126, L. 1977.

Amendments

The 1977 amendment substituted "84-437.4" for "section 5" near the beginning of the first sentence; and made minor changes in punctuation.

84-437.6. Improvements on agricultural land. In determining the total area of land actively devoted to agricultural use there shall be included the area of all land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, irrigation ditches and like facilities.

History: En. Sec. 8, Ch. 512, L. 1973; amd. Sec. 2, Ch. 457, L. 1975.

Amendments

The 1975 amendment deleted "but land under and such additional land as may be actually used in connection with the farmhouse shall be excluded in determining such total area" at the end of the section.

84-437.7. Repealed.

Repeal

Section 84-437.7 (En. Sec. 9, Ch. 512, L. 1973), relating to the application for valuation as agricultural land, was repealed by Sec. 6, Ch. 56, Laws 1974.

84-437.8. Continuance of valuation as agricultural land—roll-back tax attaching on change of use. Continuance of valuation, assessment and taxation under this act shall depend upon continuance of the land in agricultural use and compliance with the other requirements of this act

and not upon continuance in the same owner of title to the land. Liability to the roll-back tax shall attach when a change in use of the land occurs but not when a change in ownership of the title takes place if the new owner continues the land in agricultural use, under the conditions prescribed in this act.

History: En. Sec. 10, Ch. 512, L. 1973.

84-437.9. Roll-back tax on change of use of part of tract. Separation or split off of a part of the land which is being valued, assessed and taxed under this act, either by conveyance or other actions of the owner of such land, for a use other than agricultural, shall subject the land so separated to liability for the roll-back tax applicable thereto, but shall not impair the right of the remaining land to continuance of valuation, assessment and taxation hereunder, provided it meets the minimum requirements of this act.

History: En. Sec. 11, Ch. 512, L. 1973.

84-437.10. Agricultural land taken under eminent domain. The taking of land which is being valued, assessed and taxed under this act by right of eminent domain shall not subject the land so taken to the roll-back tax herein imposed.

History: En. Sec. 12, Ch. 512, L. 1973.

84-437.11. Tract crossing county line considered as whole. Where contiguous land in agricultural use in one ownership is located in more than one (1) county, compliance with the minimum requirements shall be determined on the basis of the total area and value of farm crops on such land and not the area or value of farm crops on land which is located in the particular county.

History: En. Sec. 13, Ch. 512, L. 1973.

84-437.12. Factual details as to agricultural land to be shown on tax list. The factual details to be shown on the assessor's tax list and duplicate with respect to land which is being valued, assessed and taxed under this act shall be the same as those set forth by the assessor with respect to other taxable property in the county.

History: En. Sec. 14, Ch. 512, L. 1973.

84-437.13. Rules—regulations—forms. The state department of revenue is empowered to promulgate such rules and regulations and to prescribe such forms as it shall deem necessary to effectuate the purposes of this act.

History: En. Sec. 15, Ch. 512, L. 1973.

84-437.14. Violation as misdemeanor. Any person who violates any provision of this act shall be guilty of a misdemeanor.

History: En. Sec. 16, Ch. 512, L. 1973.

84-437.15. Reclassification by department of revenue. The department of revenue or its agent may reclassify land as nonagricultural upon giving

due notice to the property owner under the provisions of section 84-429.11. Upon notice of a change in classification of land from agricultural to another use, the property owner may petition the department of revenue to reclassify the land as agricultural by completing a form prescribed by the department of revenue and by producing whatever information is necessary to prove that the subject land meets th definition of agricultural land embodied in section 84-437.2, R. C. M. 1947.

History: En. 84-437.15 by Sec. 4, Ch. 56, L. 1974.

Title of Act

An act amending sections 84-401, 84-437.2, 84-437.3, R. C. M. 1947, to provide that agricultural land shall be classified, appraised, and assessed according to its value for agricultural purposes; repealing section 84-437.7; providing an effective date; and to provide a refund for all late application penalties collected under subsection (4)(a) of section 84-437.2, R. C. M. 1947, as it was before these amendments.

84-437.16. Reclassification by owner. Whenever land which is or has been in agricultural use and is or has been valued, assessed and taxed for agricultural use is applied to a use other than agricultural, the owner shall notify the county assessor and the county assessor shall cause the following statement to be recorded by the county recorder: "On the ..... day of ....., 19....., this land became subject to the roll-back tax imposed by section 84-437.4."

History: En. 84-437.16 by Sec. 5, Ch. 56, L. 1974.

Repealing Clause

Section 6 of Ch. 56, Laws 1974 read: "Section 84-437.7 is repealed."

84-437.17. Refund of late filing fee. The county commissioners shall refund twenty-five dollars ($25) to each person who paid a late filing fee under the provisions of section 84-437.2(4)(a), R. C. M. 1947.

History: En. 84-437.17 by Sec. 7, Ch. 56, L. 1974.

Compiler's Notes

Section 84-437.2(4)(a) referred to in this section was deleted by the 1974 amendment of Sec. 84-437.2. The subdivision read "Application by the owner of the land for valuation hereunder is submitted on or before October 1 of the year immediately preceding the tax year to the county assessor in which such land is situated on the form prescribed by the state department of revenue. The county assessor shall continue to accept applications filed within sixty (60) days after October 1 upon payment of a late filing fee in the amount of twenty-five dollars ($25), which shall be paid to the county treasurer."

Effective Date

Section 8 of Ch. 56, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved February 28, 1974.

84-439. (2033) **Property concealed, misrepresented, etc.** Any property willfully concealed, removed, transferred, or misrepresented by the owner or agent thereof to evade taxation, upon discovery, must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the county tax appeal board.

History: Ap. p. Sec. 33, p. 84, L. 1891; amd. Sec. 3722, Pol. C. 1895; re-en. Sec. 2541, Rev. C. 1907; re-en. Sec. 2033, R. C. M. 1921; amd. Sec. 18, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3648.

Amendments

The 1973 amendment substitued "county tax appeal board" for "board of county commissioners" at the end of the section.

84-440. (2035) **Repealed.**

Repeal

Section 84-440 (Ap. p. Sec. 33, p. 84, L. 1891; Sec. 19, Ch. 405, L. 1973), relating to property which escaped assessment, was repealed by Sec. 11, Ch. 155, Laws 1977.

84-441. (2035) **Supplemental assessment.** When any personal property liable to taxation is brought into a county at any time after the second Monday of July, and such property has not been assessed for that year, it must be listed and assessed the same as if it had been in the county at the time of the regular assessment, and the tax must be collected, as provided in this code, at any time.

History: En. Sec. 4022, Pol. C. 1895; re-en. Sec. 2740, Rev. C. 1907; re-en. Sec. 2035, R. C. M. 1921; amd. Sec. 20, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "by the assessor" following "must be collected" near the end of the section.

84-443 to 84-447. (2037 to 2041) **Repealed.**

Repeal

Sections 84-443 to 84-447 (Secs. 40 to 42, p. 87, L. 1891; Secs. 3734 to 3736, 4012, Pol. C. 1895; Sec. 1, Ch. 44, L. 1909; Sec. 1, Ch. 43, L. 1925; Sec. 1, Ch. 135, L. 1929; Sec. 1, Ch. 56, L. 1935; Sec. 1, Ch. 14, L. 1943; Sec. 1, Ch. 115, L. 1949), relating to duties and liabilities of the county assessor and his deputies, were repealed by Sec. 120, Ch. 405, Laws 1973.

84-448. (2042) **Annual settlements.** The department of revenue, county attorney and county treasurer must annually, on the first Monday of January, make a settlement with the county clerk of all transactions connected with the revenue for the previous year, and every county treasurer, on the expiration of his office, must make such settlement.

History: En. Sec. 199, p. 128, L. 1891; re-en. Sec. 4016, Pol. C. 1895; re-en. Sec. 2734, Rev. C. 1907; re-en. Sec. 2042, R. C. M. 1921; amd. Sec. 21, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "The department of revenue" for "Every assessor" at the beginning of the section.

84-449. (2043) **Department of revenue to collect farm statistics.** It shall be the duty of the department of revenue, at the time of making the annual assessment of property to collect such statistics in relation to farm products and agricultural resources from each farm owner, operator or renter as shall be called for by the commissioner of agriculture and on blanks to be prepared and furnished by the commissioner of agriculture.

History: En. Sec. 1, Ch. 187, L. 1921; re-en. Sec. 2043, R. C. M. 1921; amd. Sec. 22, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "the department of revenue" for "each county assessor and his deputies" near the beginning of the section.

84-450. (2044) **Delivery to commissioner of agriculture.** The original blanks upon which the statistics are gathered by the department of revenue shall be returned to the commissioner of agriculture immediately on completion of the assessment work and not later than July first each year.

History: En. Sec. 2, Ch. 187, L. 1921; re-en. Sec. 2044, R. C. M. 1921; amd. Sec. 23, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "county assessor and his deputies"; and made minor changes in phraseology.

84-451. (2045) **Statistics, how obtained.** If for any reason the department of revenue is unable to obtain the statistics from any farm owner, operator or renter, it shall obtain them from the most reliable source, so that the returns may be complete.

History: En. Sec. 3, Ch. 187, L. 1921; re-en. Sec. 2045, R. C. M. 1921; amd. Sec. 24, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "county assessor or his deputy"; and made a minor change in style.

84-452. (2046) **Penalty for refusal to furnish statistics.** Any farm owner, operator, or renter refusing to furnish the information called for in section 84-449, or willfully furnishes fraudulent information to the department of revenue, upon proper request therefor, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten dollars, nor more than one hundred dollars, and cost of prosecution.

History: En. Sec. 4, Ch. 187, L. 1921; re-en. Sec. 2046, R. C. M. 1921; amd. Sec. 25, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "county assessor or his deputy."

84-453. (2047) **Repealed.**

Repeal

Section 84-453 (Sec. 5, Ch. 187, L. 1921), relating to penalty for refusal or willful neglect of duty by the county assessor or deputy, was repealed by Sec. 120, Ch. 405, Laws 1973.

CHAPTER 5—ASSESSMENT BOOK—FORM—CONTENTS—DISPOSAL

Section

84-501. Property—how listed.
84-502.1. Form of assessment book.
84-504. Map book.
84-505. Assessment and map book delivered to and kept by clerk.
84-506. Statement by agent to the department of revenue.
84-507. Penalty for failure of agent of department of revenue to complete assessment book and transmit statement.
84-508. Persons claiming ownership of land desiring to be assessed or to pay taxes.
84-509. Department to furnish assessor maps.
84-510. List of lands sold by state to be transmitted by state land agent.
84-511. Defects in form of assessment book may be supplied.
84-515. Fines and forfeitures to be paid to county treasurer.

84-501. (2048) **Property—how listed.** The department of revenue must prepare an assessment book with appropriate headings, alphabetically arranged, in which must be listed all property within the state and in which must be specified in separate columns, under the appropriate head:

(1) the name of the person to whom the property is assessed;

(2) land, by township, range, section, or fractional section and, when such land is not a United States land division or subdivision, by metes and bounds or other description sufficient to identify it, giving an estimate of the number of acres, not exceeding in each and every tract 640 acres, locality, and the improvements thereon;

(3) city and town lots, naming the city or town, and the number of the lot and block, according to the system of numbering in such city or town, and the value of same with improvements thereon;

(4) all taxable personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment;

(5) the assessed value of real estate, other than city or town lots;

(6) the assessed value of city and town lots with improvements thereon, except that a lot and improvements thereon shall be separately listed when required under 84-401, R.C.M. 1947;

(7) the assessed value of improvements on real estate assessed to persons other than the owners of the real estate. Taxable improvements owned by the person, firm, association, or corporation located upon land exempt from taxation shall, as to the manner of assessment, be assessed as other real estate upon the assessment roll. No value, however, may be assessed against the exempt land, nor under any circumstances may the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

(8) the assessed value of all taxable personal property;

(9) the school, road, and other revenue districts in which each piece of property assessed is situated;

(10) the total assessed value of all property.

History: En. Sec. 34, p. 84, L. 1891; re-en. Sec. 3724, Pol. C. 1895; re-en. Sec. 2543, Rev. C. 1907; re-en. Sec. 2048, R. C. M. 1921; amd. Sec. 26, Ch. 405, L. 1973; amd. Sec. 2, Ch. 209, L. 1975; amd. Sec. 3, Ch. 436, L. 1975; amd. Sec. 5, Ch. 126, L. 1977. Cal. Pol. C. Sec. 3650.

Amendments

The 1973 amendment substituted "state department of revenue" for "assessor" in the preliminary clause; deleted "unless otherwise directed by the state board of equalization" following "alphabetically arranged" in the preliminary clause; substituted "state" for "county" in the preliminary clause; and deleted subdivision 16 covering other items required by the state board of equalization.

Chapter 209, Laws of 1975, substituted "assessed value" for "cash value" throughout subdivisions 5 to 8; and inserted "assessed" before "value" in present subdivision 12.

Chapter 436, Laws of 1975, inserted "the value of same with" before "improvements" in subdivision 3; deleted a former subdivision 6 reading "The cash value of improvements on such real estate"; added "with improvements thereon * * * under section 84-401, R. C. M. 1947" to subdivision 6; deleted a former subdivision 8 reading "The cash value of improvements on city and town lots"; and renumbered the subdivisions accordingly.

The 1977 amendment inserted "taxable" before "personal property" in subdivisions (4) and (8); redesignated former subdivision 10 as the second and third sentences of subdivision (7); deleted "exclusive of money" at the end of subdivision (8); deleted a former subdivision 9 reading "The amount of money"; redesignated former subdivisions 11 and 12 as subdivisions (9) and (10); deleted a former subdivision 13 reading "The figure one (1), in separate columns, opposite the name of every person liable to pay a poll tax"; and made minor changes in phraseology, punctuation and style.

Effective Date

Section 3 of Ch. 209, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 31, 1975.

84-502. (2049) Repealed.

Repeal

Section 84-502 (Sec. 3725, Pol. C. 1895), relating to the form of the assessment book, was repealed by Sec. 120, Ch. 405, Laws 1973. For new law, see sec. 84-502.1.

84-502.1. Form of assessment book. The form of the assessment book must be as directed by the state department of revenue.

History: En. 84-502.1 by Sec. 27, Ch. 405, L. 1973.

Title of Act

An act to provide for a general revision of the tax laws of Montana to implement article VIII, sections 3 and 7 of the 1972 Montana constitution by designating the state department of revenue as the tax administration agency for the state of

Montana, by creating a state tax appeal board, by designating county assessors as agents of the state department of revenue, and by providing for county tax appeal boards; and to repeal sections 84-211, 84-429.10, 84-443, 84-444, 84-445, 84-446, 84-447, 84-453, 84-502, 84-503, 84-4732, 84-4733, 84-4734, and 84-4735.

84-503. (2050) **Repealed.**

Repeal

Section 84-503 (Sec. 1697, 5th Div. Comp. Stat. 1887; Sec. 19, p. 91, Ex. L. 1887; Sec. 36, p. 86, L. 1891), relating to the county assessor's affidavit on completion of the assessment book, was repealed by Sec. 120, Ch. 405, Laws 1973.

84-504. (2051) **Map book.** The department of revenue must, in a map book, make a plat of the various blocks within any incorporated city or town, and mark thereon, in each subdivision, the name of the person to whom it is assessed.

History: En. Sec. 3727, Pol. C. 1895; re-en. Sec. 2546, Rev. C. 1907; re-en. Sec. 2051, R. C. M. 1921; amd. Sec. 28, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "assessor"; and deleted "when directed so to do by the board of commissioners" following "The department of revenue must."

84-505. (2052) **Assessment and map book delivered to and kept by clerk.** As soon as completed, the assessment book, together with the map book and statements, must be delivered to the county clerk, who must immediately give notice thereof, and of the time the county tax appeal board will meet to consider protests concerning assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct; and in the meantime the assessment book must remain in his office for the inspection of all persons interested.

History: En. Sec. 37, p. 86, L. 1891; re-en. Sec. 3728, Pol. C. 1895; re-en. Sec. 2547, Rev. C. 1907; re-en. Sec. 2052, R. C. M. 1921; amd. Sec. 29, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3654.

Amendments

The 1973 amendment substituted "county tax appeal board" for "board of commissioners"; and substituted "consider protests concerning assessments" for "equalize assessments."

84-506. (2053) **Statement by agent to the department of revenue.** On the second Monday in July in each year, the agent of the department of revenue in each county must transmit to the state department of revenue a statement, showing:

1 to 4. * * * [Same as parent volume.]

History: En. Sec. 3729, Pol. C. 1895; re-en. Sec. 2548, Rev. C. 1907; re-en. Sec. 2053, R. C. M. 1921; amd. Sec. 30, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3655.

Amendments

The 1973 amendment substituted "agent of the department of revenue in" for "assessor of"; and substituted "state department of revenue" for "state board of equalization" in the preliminary clause.

84-507. (2054) **Penalty for failure of agent of department of revenue to complete assessment book and transmit statement.** Every agent of the department of revenue who fails to complete his assessment book, or who fails to transmit the statement mentioned in the preceding section to the state department of revenue, forfeits the sum of one thousand dollars to be recovered on his official bond, for the use of the department, or to be deducted from his salary by the director of revenue.

History: En. Sec. 3730, Pol. C. 1895; re-en. Sec. 2549, Rev. C. 1907; re-en. Sec. 2054, R. C. M. 1921; amd. Sec. 31, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3656.

Amendments

The 1973 amendment substituted "agent of the department of revenue" for "assessor"; substituted "department of revenue" for "board of equalization"; substituted "department" for "county"; and substituted "director of revenue" for "board of county commissioners."

84-508. (2055) **Persons claiming ownership of land desiring to be assessed or to pay taxes.** Lands once described on the assessment book need not be described a second time, but any person claiming the same, and desiring to be assessed therefore, may have his name inserted with that of the person to whom such land is assessed.

When the owner of one or more parcels of real property conveys a portion of his interests to a buyer in a recorded transaction, the buyer may require the county treasurer to accept payment from the buyer on such portion of the taxes already levied against such property as may then be due and payable. The department of revenue or its agent shall co-operate with and assist the buyer and the county treasurer in keeping necessary records of the separation or division of a parcel or parcels listed together on the assessment lists.

History: En. Sec. 3731, Pol. C. 1895; re-en. Sec. 2550, Rev. C. 1907; re-en. Sec. 2055, R. C. M. 1921; amd. Sec. 1, Ch. 283, L. 1975. Cal. Pol. C. Sec. 3657.

Amendments

The 1975 amendment added the second paragraph.

Duty of Owner

The burden falls on the owner of land to inform the taxing authorities of his continued interest in the land and of his current address, and tax-sale purchaser was not required to search the probate records to learn of owner's death or name and address of administrator. Madden v. Zimmerman, — M —, 532 P 2d 414.

84-509. (2056) **Department to furnish assessor maps.** The department of revenue must provide maps for the use of its agents, showing the private lands owned or claimed in the county, and if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages or school districts may in like manner be provided. The cost of making such maps is a state charge, and must be paid from the state general fund.

History: En. Sec. 3732, Pol. C. 1895; re-en. Sec. 2551, Rev. C. 1907; re-en. Sec. 2056, R. C. M. 1921; amd. Sec. 32, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3658.

Amendments

The 1973 amendment substituted "department of revenue" for "board of county commissioners"; substituted "its agents" for "the assessor"; and substituted "state" for "county" in two places in the last sentence.

84-510. (2057) **List of lands sold by state to be transmitted by state land agent.** On or before the first day of January in each year, the state land agent must make out and transmit to the department of revenue where lands or lots lie that have been sold by the state, for which certificates of purchase, patents, or deeds have issued, during the year preceding, certified lists of such lands or lots, giving a description thereof by divisions or subdivisions, or lots and blocks, together with the names of the purchasers thereof.

History: En. Sec. 3733, Pol. C. 1895; re-en. Sec. 2552, Rev. C. 1907; re-en. Sec. 2057, R. C. M. 1921; amd. Sec. 33, Ch. 405, L. 1973; amd. Sec. 11, Ch. 388, L. 1975. Cal. Pol. C. Sec. 3659.

Amendments

The 1973 amendment substituted "department of revenue" for "assessor of each county."

The 1975 amendment substituted "the first day of January" for "the first Monday in March"; and deleted "may" before "have been sold by the state."

84-511. (2058) **Defects in form of assessment book may be supplied.** Omissions, errors, or defects in form in any original or duplicate assessment book, when it can be ascertained therefrom what was intended, may, with the consent of the county attorney, be supplied or corrected by the department of revenue at any time prior to the sale for delinquent taxes, and after the original assessment was made.

History: En. Sec. 193, p. 127, L. 1891; re-en. Sec. 4010, Pol. C. 1895; re-en. Sec. 2728, Rev. C. 1907; re-en. Sec. 2058, R. C. M. 1921; amd. Sec. 34, Ch. 405, L. 1973, Cal. Pol. C. Sec. 3881.

Amendments

The 1973 amendment substituted "department of revenue" for "assessor."

84-514. (2061) **Repealed.**

Repeal

Section 84-514 (Sec. 196, p. 127, L. 1891), relating to the use of abbreviations in describing land, was repealed by Sec. 15, Ch. 126, Laws 1977.

84-515. (2062) **Fines and forfeitures to be paid to county treasurer.** Except for the forfeiture described in section 84-507, R. C. M. 1947, all fines, forfeitures, and penalties incurred by a violation of any of the provisions of this title must be paid into the treasury for the use of the county where the person against whom the recovery is had resides.

History: En. Sec. 198, p. 127, L. 1891; re-en. Sec. 4015, Pol. C. 1895; re-en. Sec. 2733, Rev. C. 1907; re-en. Sec. 2062, R. C. M. 1921; amd. Sec. 35, Ch. 405, L. 1973.

Amendments

The 1973 amendment inserted "Except for the forfeiture described in section 84-507, R. C. M. 1947" at the beginning of the section; and made a minor change in phraseology.

CHAPTER 6—EQUALIZATION OF TAXES AND COUNTY TAX APPEAL BOARD

Section
84-601. County tax appeal board—meetings and compensation.
84-603. Application for reduction in valuation.
84-604. Examination of applicant.
84-605. Change of valuation of class of property—hearing necessary.
84-606. Witnesses may be subpoenaed.
84-607. Agent to be present—statement of property not assessed.
84-608. State department of revenue to use records in equalizing.
84-610. Department must keep record of proceedings and make oath.

84-601. (2113) **County tax appeal board—meetings and compensation.** The board of county commissioners of each county shall appoint a three-member county tax appeal board with the members to serve staggered terms of 3 years each. The members of each county tax appeal board shall be residents of the county in which they serve. They shall receive compensation of $25 a day and travel expenses as provided for in 59-538, 59-539, and 59-801, as amended, only when the county tax appeal board is in session

to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation shall be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards shall be furnished by the county. All other incidental expenses shall be paid from the appropriation of the state tax appeal board. The county tax appeal board must meet on the third Monday of April in each year to hear protests concerning assessments made by the department of revenue. It must continue in session for that purpose from time to time until the business of hearing protests is disposed of, but not later than the last Monday in June unless granted additional time by order of the state tax appeal board. In connection with any such appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. The county clerk shall publish a notice to taxpayers, giving the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for such hearings. The notice shall be published in a newspaper if any is printed in the county, or if none, then in such manner as the board may direct. The notice shall be published at least 7 days prior to the first meeting of the county tax appeal board.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2572, Rev. C. 1907; re-en. Sec. 2113, R. C. M. 1921; amd. Sec. 36, Ch. 405, L. 1973; amd. Sec. 1, Ch. 38, L. 1974; amd. Sec. 1, Ch. 285, L. 1975; amd. Sec. 1, Ch. 355, L. 1977; Sec. 25, Ch. 453, L. 1977. Cal. Pol. C. Sec. 3672.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 355 and once by Ch. 453. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Implementation

Section 2 of Chapter 355, Laws of 1977, read "As of December 31, 1980, one member of the county tax appeal board shall be appointed for a 1-year term, one member shall be appointed for a 2-year term, and the third and all succeeding members shall be appointed for 3-year terms."

Amendments

The 1973 amendment substituted the first four sentences for "The board of county commissioners is the county board of equalization and"; inserted "The county tax appeal board" at the beginning of the fifth sentence; substituted "hear protest concerning assessments made by the department of revenue" for "to examine the assessment book and equalize the assessment of property in the county" at the end of the fifth sentence; substituted "hearing protests" in the sixth sentence for "equalization"; and added the ninth sentence.

The 1974 amendment substituted "effective July 1, 1973, receive compensation of twenty-five dollars ($25.00) per day and travel expenses" in the second sentence for "receive travel expenses and per diem"; added "or attending meetings called by the state tax appeal board" at the end of the second sentence; substituted "compensation" for "per diem" in the third sentence; inserted the fourth sentence; and made a minor change in punctuation.

The 1975 amendment changed the board's meeting date from the third Monday of July to the third Monday of June; and added the last two sentences.

Chapter 355, Laws of 1977, added "with the members to serve staggered terms of 3 years each" at the end of the first sentence; deleted "they shall serve four (4) year terms and shall effective July 1, 1973" after "serve" at the end of the second sentence; divided the former second sentence into two sentences; deleted the former sixth sentence which read "The first term shall run from July 1, 1973, through December 31, 1976"; substituted "April" for "June" in the seventh sentence; substituted "last Monday in June unless granted additional time by order of the state tax appeal board" at the end of the eighth sentence for "second Monday in August"; and made minor changes in phraseology, punctuation and style.

Chapter 453, Laws of 1977, inserted "as provided for in 59-538, 59-539, and 59-801,

as amended" in the third sentence; and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 285, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 7, 1975.

84-602. (2114) **Repealed.**

Repeal

Section 84-602 (Sec. 2573, Rev. C. 1907; Sec. 1, Ch. 43, L. 1927; Sec. 1, Ch. 187, L. 1933; Sec. 1, Ch. 196, L. 1957; Sec. 37, Ch. 405, L. 1973; Sec. 52, Ch. 566, L. 1977), relating to equalization of assessments, was repealed by Sec. 11, Ch. 155, Laws 1977.

84-603. (2115) **Application for reduction in valuation.** No reduction may be made in the valuation of property unless the party affected or his agent makes and files with the county tax appeal board on or before the first Monday in June a written application therefor. The application shall state the post-office address of the applicant, shall specifically describe the property involved, and shall state the facts upon which it is claimed such reduction should be made.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2574, Rev. C. 1907; re-en. Sec. 2115, R. C. M. 1921; amd. Sec. 2, Ch. 187, L. 1933; amd. Sec. 1, Ch. 103, L. 1945; amd. Sec. 2, Ch. 196, L. 1957; amd. Sec. 38, Ch. 405, L. 1973; amd. Sec. 1, Ch. 360, L. 1975; amd. Sec. 3, Ch. 155, L. 1977; amd. Sec. 3, Ch. 355, L. 1977. Cal. Pol. C. Sec. 3674.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 155 and once by Ch. 355. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment inserted "county tax appeal" before "board" in the first sentence; deleted "verified by his oath" from the end of the first sentence; and substituted "department of revenue" for "board of county commissioners" at the beginning of the last sentence.

The 1975 amendment substituted "third Monday of July" for "first day of August."

Chapter 155, Laws of 1977, deleted the last sentence which read: "The department of revenue shall, however, have the right to raise or lower the valuation of all of one class of property in a county, as provided in the preceding section"; and made minor changes in phraseology and punctuation.

Chapter 355, Laws of 1977, substituted "first Monday in June" near the end of the first sentence for "third Monday of July."

Availability of Statutory Remedies

Class action suit protesting method of assessment as being unconstitutional was properly filed directly against the department of revenue without first exhausting administrative remedies. Larson v. State, — M —, 534 P 2d 854.

84-604. (2116) **Examination of applicant.** Before the county tax appeal board grants any application or makes any reduction applied for, it must examine on oath, the person or agent making the application, touching the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in the preceding section, and attends and answers all questions pertinent to the inquiry. The testimony of all witnesses upon such hearing must be taken in shorthand or by stenotype or electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, all testimony must be transcribed or otherwise reduced to writing and forwarded together with all exhibits to the state tax appeal board. The date of hearing, the proceedings before the board, and the decision, must be

entered upon the minutes of the board, and the board shall notify the applicant of its decision, by registered or certified mail within 3 days thereafter. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the second Monday in July.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2575, Rev. C. 1907; re-en. Sec. 2116, R. C. M. 1921; amd. Sec. 3, Ch. 187, L. 1933; amd. Sec. 3, Ch. 196, L. 1957; amd. Sec. 39, Ch. 405, L. 1973; amd. Sec. 2, Ch. 38, L. 1974; amd. Sec. 4, Ch. 355, L. 1977. Cal. Pol. C. Sec. 3675.

Amendments

The 1973 amendment inserted "county tax appeal" before "board" at the beginning of the first sentence; deleted "except where the investigation is made by the county commissioners, as such board of equalization, and the change applies to all of certain class of property in the county" from the end of the second sentence; and added the last sentence.

The 1974 amendment substituted "taken in shorthand or by stenotype or electronically recorded and preserved for one (1) year" at the end of the third sentence for "reduced to writing and preserved, and transcribed if taken in shorthand or stenotype"; and inserted the fourth sentence.

The 1977 amendment substituted "second Monday in July" at the end of the section for "third Monday in August"; and made minor changes in style.

Effective Date

Section 5 of Ch. 355, Laws 1977 provided the act should be effective upon its passage and approval. Approved April 11, 1977.

84-605. (2116.1) **Change of valuation of class of property—hearing necessary.** The state department of revenue may hold a public hearing to determine the value of any class of property in any county and shall have authority to raise or lower the value of any class of property on the basis of testimony adduced at such hearing.

History: En. Sec. 4, Ch. 187, L. 1933; amd. Sec. 40, Ch. 405, L. 1973.

Amendments

The 1973 amendment completely rewrote this section. For prior law, see parent volume.

84-606. (2117) **Witnesses may be subpoenaed.** Upon the hearing of the application the department may subpoena such witnesses, hear and take such evidence in relation to the subject pending, as in its discretion it may deem proper.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2576, Rev. C. 1907; re-en. Sec. 2117, R. C. M. 1921; amd. Sec. 6, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3676.

Amendments

The 1973 amendment substituted "department" for "board."

84-607. (2118) **Agent to be present—statement of property not assessed.** During the hearing of the department the agent of the state who assessed the property whose testimony is needed must be present and may make any statement, or introduce and examine witnesses on questions before the department, and shall, when requested by the department or any party to the proceeding, furnish to the department a written statement showing the basis for his valuation of the property under consideration at the hearing; and shall, when requested by the department or any party to the proceeding, furnish to the department a written statement showing the basis for his valuation of any comparable property

in the vicinity of the property under consideration at the hearing. At the meeting the agent shall present to the department a statement setting forth all property which has escaped assessment or which, by reason of erroneous reports or othewise, has been assessed for less than its correct value; thereupon it shall be the duty of the department immediately to investigate the statement, and in the event that any property owner has been assessed for property at a smaller amount or at a less valuation than should properly have been given, the department shall order the agent to correct such assessment in the manner provided for the correction of assessments by the department of revenue.

History: En. Sec. 3785, Pol. C. 1895; re-en. Sec. 2577, Rev. C. 1907; amd. Sec. 1, Ch. 53, L. 1921; re-en. Sec. 2118, R. C. M. 1921; amd. Sec. 1, Ch. 102, L. 1951; amd. Sec. 41, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3677.

Amendments

The 1973 amendment substituted "hearing of the department" and "agent of the state who assessed the property" for "session of the board" and "assessor and any deputy" near the beginning of the first sentence; substituted references to the department of revenue for references to the board of equalization; substituted references to the agent of the department of revenue for references to the county assessor or deputy; deleted "and while sitting as a board of equalization" following "the duty of the department immediately" in the middle of the last sentence; and inserted "order the agent to" near the end of the last sentence.

84-608. (2119) **State department of revenue to use records in equalizing.** The state department of revenue must use the abstract and all other information it may gain from the records of the county clerk or elsewhere, in equalizing the assessment of the property of each county, and may require entry upon the assessment book of any property which has not been assessed; and any assessment made as prescribed in this section has the same force and effect as if made before the delivery of the assessment book to the county clerk.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2580, Rev. C. 1907; re-en. Sec. 2119, R. C. M. 1921; amd. Sec. 42, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3679.

Amendments

The 1973 amendment substituted the reference to the state department of revenue for a reference to the board of county commissioners; deleted references to the assessor; and made minor changes in phraseology.

84-609. (2120) **Repealed.**

Repeal

Section 84-609 (Sec. 2581, Rev. C. 1907; Sec. 43, Ch. 405, L. 1973), relating to direct assessments by the department of revenue, was repealed by Sec. 11, Ch. 155, Laws 1977.

84-610. (2121) **Department must keep record of proceedings and make oath.** The department must record, in a book to be kept for that purpose, all changes, corrections, and orders made by it and must direct its agent to enter upon the assessment book all changes and corrections made by it.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2582, Rev. C. 1907; re-en. Sec. 2121, R. C. M. 1921; amd. Sec. 44, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3682.

Amendments

The 1973 amendment substituted "department" for "county clerk," deleted "during its session, or as soon as possible after its adjournment" following "and orders made by it and"; inserted "direct its agent to" near the end of the section;

and deleted "and on or before the first Monday of August must affix his affidavit thereto, subscribed by him as follows: (form of affidavit deleted)" from the end of the section.

CHAPTER 7—STATE DEPARTMENT OF REVENUE AND TAX APPEAL BOARD

Section
84-701. State tax appeal board—appointment of members—term of office.
84-702. Qualification and compensation.
84-703. Organization, quorum, sessions.
84-704. Definitions.
84-705. Employees—expenses—minutes—rules.
84-706. Office, furnishings and supplies.
84-708. Powers and duties.
84-708.1. Powers and duties of the department of revenue.
84-708.2. Central reporting system for identification of corporations.
84-708.3. Rules and regulations for central reporting system.
84-708.4. List of corporations furnished by secretary of state.
84-708.5. Labor department to furnish list of corporations.
84-708.6. List of corporations compiled by revenue department.
84-708.7. Cross-referencing of lists by department of revenue.
84-708.8. Lists of corporations not open to inspection.
84-708.9. Department audit of taxable value—costs of audit paid by county—penalty for underreporting.
84-708.10. Audit fee paid to general fund.
84-709. Appeal to state tax appeal board—hearing.
84-709.1. Judicial review of contested cases.
84-709.2. Petition for interlocutory adjudication.
84-709.3. Jurisdiction to make interlocutory adjudication.
84-709.4. Direct appeal from department decision to state tax appeal board—hearing.
84-711. Assessment of omitted property—limitation.
84-712. Statement of changes to be sent to county clerk.
84-714. Penalty for refusal to furnish information.
84-715. Duties of public officers.
84-716. Hearings, witnesses, contempt, fees and subpoenas.
84-717. Seal.
84-723. Collection of nonresident inheritance taxes, gross earnings on freight lines, license taxes by state department of revenue.
84-724. Destruction of tax records authorized—procedure.
84-725. Suspense account for receipts and refunds.
84-726. Refund of overpayments—time of filing claims for refund—procedure.
84-727. Assessment of proportionally registered interstate motor vehicle fleets—full or partial year—tax payment required for registration.
84-728. Valuation of interstate fleets—determination of aggregate tax due.
84-729. Determination of average levy in state—application to interstate fleets—cost stated in application for registration.
84-730. Situs in state of proportionally registered fleets—collection of property tax.
84-732. Certified copies of corporation license and income tax returns furnished to taxpayer—fee.
84-733. Corporation license tax clearance certificates furnished—fee.
84-734. Fees to reimburse department for costs—deposit in general fund.

84-701. (2122.1) **State tax appeal board—appointment of members—term of office.** The members of the state board of equalization shall constitute the first members of the state tax appeal board as provided in this section. On the effective date of this act, there shall be created a state tax appeal board which shall be composed of three members to be appointed by the governor for staggered terms by and with the advice and consent of the senate provided, however, a member so appointed may serve until the next regular session of the legislature without such advice and consent. Each succeeding member shall hold his office for a term of six years, and until his successor shall be appointed and shall have qualified. Any vacancy shall be filled by the governor subject to con-

firmation by the senate during the next legislative session. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the last day of January during the session of the legislative assembly, next preceding the commencement of the term for which the appointment is made.

History: En. Sec. 1, Ch. 3, L. 1923; amd. Sec. 50, Ch. 100, L. 1973; amd. Sec. 45, Ch. 405, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 405. Chapter 405 was later in date of approval. Neither amendatory act mentioned or incorporated the changes made by the other. The acts appear not to conflict except possibly with respect to the method of appointment of board members. In this respect, the compiler has used the language of Ch. 405.

Amendments

Chapter 100, Laws of 1973, deleted "created by article XII of the constitution as amended" after "board of equalization" in the former first sentence; deleted second and third sentences relating to the appointment and terms of office of the first members of the commission; deleted "in accordance with the provisions of the constitution" from the end of the present fourth sentence; and made minor changes in phraseology.

Chapter 405, Laws of 1973, substituted two new sentences for the first three sentences in the parent volume; substituted "by the governor subject to confirmation by the senate during the next legislative session" for "by appointment in accordance with the provisions of the constitution" at the end of the fourth sentence; and deleted "biennial" before "session of the legislative assembly" in the final sentence.

84-702. (2122.2) **Qualification and compensation.** To be appointed a member of the state tax appeal board, a person must possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed may hold any other office under the laws of this state or any other state, or any office under the government of the United States or under the government of any other state. He shall devote his entire time to the duties of the office and shall not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with his duties. The state tax appeal board is transferred to the department of administration for administrative purposes only as is specified in 82A-108. However, the board may hire its own personnel, and 82A-108(2)(d) does not apply. The member designated chairman as provided for in 84-703 shall receive additional compensation of not more than $500 a year, payable in the same manner as the salary. The state tax appeal board shall be paid travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended, when away from the capital on official business.

History: En. Sec. 2, Ch. 3, L. 1923; amd. Sec. 1, Ch. 109, L. 1953; amd. Sec. 8, Ch. 225, L. 1963; amd. Sec. 13, Ch. 237, L. 1967; amd. Sec. 46, Ch. 405, L. 1973; amd. Sec. 26, Ch. 453, L. 1977.

Amendments

The 1967 amendment deleted a sentence setting maximum salary for members at $10,000; substituted three sentences providing for salaries to be specified in general appropriation acts or to be established by the board of examiners, based on prescribed criteria, if the legislature failed to establish salaries; and made minor style changes.

The 1973 amendment substituted "state tax appeal board" for "board of equalization" in the first sentence; deleted the three sentences inserted by the 1967 amendment and another sentence requiring monthly payment of salaries; inserted new fourth and fifth sentences; substituted "designated chairman" for "elected chairman" at the beginning of the sixth sentence; extended the final sentence to the entire board instead of just the chairman; substituted "per diem and travel expenses" in the final sentence and "actual traveling and other expenses"; substituted "capital" for "capitol" in the final sentence; and made minor changes in phraseology.

The 1977 amendment substituted "travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended" in the last sentence for "per diem and travel expenses"; and made minor changes in phraseology, punctuation and style.

84-703. (2122.3) **Organization, quorum, sessions.** The members of the state tax appeal board shall without delay, meet at the state capital and the governor shall designate one of their members as chairman. A majority of said board shall constitute a quorum. It shall be in continuous session and open for the transaction of business every day except Saturdays, Sundays and legal holidays; and the sessions of said board shall stand and be deemed to be adjourned from day to day without formal entry thereof upon its records. The board may hold sessions or conduct hearings and investigations at other places than the capitol when deemed necessary to facilitate the performance of its duties or to accommodate parties in interest.

History: En. Sec. 3, Ch. 3, L. 1923; amd. Sec. 47, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "the state tax appeal board" for "said board of equalization first appointed" near the beginning of the first sentence; substituted "the governor shall designate" for "shall organize and elect" near the end of the first sentence; and inserted "Saturdays" in the third sentence.

84-704. (2122.4) **Definitions.** (1) The term "state board" or "board" when used in this act without other qualification shall mean the state tax appeal board.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" when used in this act shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

History: En. Sec. 4, Ch. 3, L. 1923; amd. Sec. 48, Ch. 405, L. 1973; amd. Sec. 3, Ch. 52, L. 1977.

Amendments

The 1973 amendment substituted "tax appeal board" for "board of equalization" at the end of subsection (1).

The 1977 amendment deleted a former subsection (2) reading "The term 'person,' when used in this act, shall mean and include any individual, firm, partnership, association or corporation unless otherwise expressly stated"; redesignated former subsection (3) as subsection (2); and made a minor change in punctuation.

84-705. (2122.5) **Employees — expenses — minutes — rules.** The state tax appeal board may appoint a secretary and employ such other persons as experts, assistants, clerks and stenographers, as may be necessary to perform the duties that may be required of it. The total expenses of such board shall not exceed, in the aggregate, during any fiscal year, the amount appropriated for the board for all purposes by the legislature for such year. The secretary shall keep full and correct minutes of the transactions and proceedings of said board, shall have authority to administer oaths and perform such other duties as may be required of him. The board may make all needful rules for the orderly and methodical performance of its duties as a tax appeal board and for conducting hearings and other proceedings before it.

History: En. Sec. 5, Ch. 3, L. 1923; amd. Sec. 1, Ch. 82, L. 1947; amd. Sec. 49, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "subject to the provisions of sections 59-901 and 59-902" from the beginning of the first sentence; substituted "tax appeal board" for "board of equalization" in the first and last sentences; and deleted a third sentence authorizing the former board to require the assistance of engineers employed by other state agencies.

84-706. (2122.6) **Office, furnishings and supplies.** The board shall keep its office at the capital, and shall be provided with suitable and necessary offices and office furniture, printing, supplies, stationery, books, periodicals, and financial and commercial reports.

History: En. Sec. 6, Ch. 3, L. 1923; amd. Sec. 50, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "capital" for "capitol."

84-707. (2122.7) **Repealed.**

Repeal

Section 84-707 (Sec. 7, Ch. 3, L. 1923), relating to continuity between the former state board of equalization and its predecessor, was repealed by Sec. 58, Ch. 100, Laws 1973. Chapter 405, Laws of 1973 purported to amend this section, but the purported amendment was void under the rule in section 43-515.

84-708. (2122.8) **Powers and duties.** It shall be the duty of the state tax appeal board:

(1) To prescribe rules and regulations for the tax appeal boards of the different counties in the performance of their duties and for this purpose may schedule meetings of county tax appeal boards, and it shall be the duty of all invited county tax appeal board members to attend if possible and the cost of their attendance shall be paid from the appropriation of the state tax appeal board;

(2) To hear appeals from decisions of the county tax appeal boards;

(3) To hear appeals from decisions of the department of revenue in regard to business licenses, property assessments, taxes, and penalties.

(4) Hearings, witnesses, contempt, fees and subpoenas. Oaths to witnesses in any investigation by the state tax appeal board may be administered by a member of the board or his agent. In case any witness shall fail to obey any summons to appear before said board, or shall refuse to testify, or answer any material questions, or to produce records, books, papers, or documents when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to punish the witness for such neglect or refusal. Any person who shall testify falsely in any material matter, under consideration by the board shall be guilty of perjury and punished accordingly. Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the board.

(5) The state tax appeal board shall also have the duties of an appeal board relating to such other matters as may be provided by law.

History: En. Sec. 8, Ch. 3, L. 1923; amd. Sec. 1, Ch. 137, L. 1957; amd. Sec. 1, Ch. 227, L. 1963; amd. Sec. 1, Ch. 211, L. 1971; amd. Sec. 52(a), Ch. 405, L. 1973; amd. Sec. 3, Ch. 38, L. 1974.

Amendments

The 1971 amendment inserted in former subdivision (3) a clause authorizing the former board to apportion the assessed value of telegraph or telephone microwave electronic equipment among the counties; and made minor changes in style.

The 1973 amendment completely rewrote the section.

The 1974 amendment added "and for this purpose may schedule meetings of county tax appeal boards, and it shall be the duty of all invited county tax appeal board members * * * state tax appeal board" at the end of subdivision (1); and made a minor change in phraseology.

Effective Date

Section 2 of Ch. 211, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 4, 1971.

Cross-References

Continuation of board's functions, sec. 82A-1803 (1).

Board Not Quasi-Judicial Body

State tax appeal board is not a quasi-judicial body as defined in 82A-112(1); but it may nonetheless perform some quasi-judicial functions and exercise its judgment and discretion pursuant to the provisions of this section. Department of Revenue v. Burlington Northern, Inc., — M —, 545 P 2d 1083.

County Board Authority

County board of equalization possesses jurisdiction and authority to direct and sanction classification, appraisal and assessment of rural and urban improvements, using "market value" as basis and classifying them according to use or uses other than those to which such land is actually devoted. Mohland v. State Board of Equalization, 155 M 49, 466 P 2d 582, certiorari denied, 400 US 940, 91 S Ct 232.

Legislative Purpose

The intent of the legislature was to maintain continuity between the former state board of equalization and the new state tax appeals board and to transfer the appellate functions of the old board to the new. Department of Revenue v. Burlington Northern, Inc., — M —, 545 P 2d 1083.

84-708.1. Powers and duties of the department of revenue. (1) The department of revenue shall centrally assess the properties described in 84-7801.

(2) The department of revenue may adopt rules necessary for the taxation of property under chapters 8, 9, 13, 54, 62, 64, and 78.

(3) The department of revenue shall adjust and equalize the valuation of taxable property among the several counties and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of agents of the department; change, increase, or decrease valuations made by its agents; and exercise such authority and do all things necessary to secure a fair, just, and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

(4) The department of revenue shall have and exercise general supervision over the administration of the assessment and tax laws of the state and over its agents and any officers of municipal corporations having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law and may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement. The department of revenue shall schedule and hold area schools within the state for appraisers and assessors as often as it considers necessary. The costs of such appraisers and assessors attending shall be borne by the state. The department shall notify all assessors and appraisers at least 6 months before such school is scheduled. All assessors and appraisers shall attend.

(5) The department of revenue shall confer with, advise, and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(6) The department of revenue may direct proceedings, actions, and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities, and punishment of public officials and persons or their agents

for failure or neglect to comply with the provisions of the statutes governing the revenue of the state or municipal corporations. The department shall cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

(7) The department of revenue may require county attorneys to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals, and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws, in their respective counties.

(8) The department of revenue shall collect annually from the proper officers of the municipal corporations information about the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful and helpful in the work of the department in such form and upon such blanks as the department shall prescribe. It shall be the duty of all public officers so called upon to fill out properly and return promptly to the department all blanks so transmitted and in every way aid the department in its work. The department shall examine the records of all municipal corporations for such purposes as are considered needful or helpful.

(9) (a) The department of revenue may inspect and examine or cause an inspection and examination of the records of the officers of any municipality whenever such officer has failed, neglected, or refused to return properly the information required by this section within the time set by the department. Upon completion of such inspection and examination, the department shall transmit to the clerk or other proper official of the municipality a statement of the expenses incurred by the department to secure the necessary information. Within 60 days after the receipt by the municipality of the above statement, the same shall be audited as other claims of the municipal corporation are audited, and shall be paid into the state treasury. If the statement is not paid, the attorney general shall institute an action in the proper court against the municipality to recover the same.

(b) The officers responsible for the furnishing of the information collected pursuant to this section shall be jointly and severally liable for any loss the municipality may suffer through their delinquency. No payment may be made to them for salary or on any other account until the cost of such inspection and examination as provided above has been paid into the treasury or to the proper officers of such municipality. They shall also be subject to the other fines and penalties as prescribed by law.

(10) The department of revenue may require persons to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other expenses, taxes, and all other facts which may enable the department to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

(11) The department of revenue may summon witnesses to appear and give evidence and to produce records, books, papers, and documents relat-

ing to any matter which the department has authority to investigate and determine.

(12) The department of revenue may cause the deposition of witnesses residing within or without the state or absent therefrom to be taken upon notice to the interested party, if any, in like manner that depositions are taken in actions pending in the district court, in any matter which the department has authority to investigate and determine.

(13) The department of revenue may examine all cases where evasion or violation of the laws for taxation of property, proceeds, occupation, or business is alleged, complained of, or discovered and ascertain wherein existing laws are ineffective or are improperly or negligently administered.

(14) The department of revenue may investigate the tax systems of other states and countries and formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in the system of taxation and the economical expenditure of public revenue in the state.

(15) The department of revenue shall consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto, and the progress of the work of the department and furnish the governor such assistance as he may require.

(16) The department of revenue shall transmit to the governor and to each member of the legislature 20 days before the meeting of the legislature a report of the department showing all the taxable property of the state and its value in tabulated form, with recommendations for improvements in the system of taxation, together with measures as may be formulated for the consideration of the legislature. The department may include a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium with indexes tabulated at sufficient intervals to show the comparative state price structures.

(17) The department of revenue may, in its discretion, waive the assessment of penalty for the late filing of any tax statement or return required to be filed with the department when the filing is done within 5 days of the date specified for filing the return or statement and for the late payment of any tax collected by the department when the payment is made within 5 days of the date specified for payment of the tax.

(18) The department of revenue may, in its discretion, enter into reciprocal agreements with the taxing authorities of states contiguous to the state of Montana which tax the income of Montana residents earned in that state to provide that the tax imposed by Title 84, chapter 49, on income derived by persons who are nonresidents of this state is not payable when such other state or states agree to grant similar treatment to residents of Montana.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; Sec. 53, Ch. 566, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 98 and once by Ch. 566. The code commissioner has made a composite section embodying some, but not all, the changes made by both amendments.

Amendments

Chapter 134, Laws of 1975, added subsection (17).

Chapter 381, Laws of 1975, added subsection (18).

Chapter 465, Laws of 1975, added "or more than one (1) state" to the end of the first sentence in subsection (1); substituted "or if the property * * * may be just and proper" in the second sentence of subsection (1) for "or in the case of telegraph or telephone microwave electronic equipment, which has no physical connection with the total system, but is an integral part of such system, apportion the valuation for assessment of such company in this state among the several counties of this state in such proportion as will fairly represent the valuation for assessment within each such county, utilizing commonly recognized methods of apportioning as shall be just and equitable"; and made minor changes in phraseology, punctuation and style.

Chapter 98, Laws of 1977, rewrote subsections (1) and (2) which read: "(1) To annually assess the franchise, roadway, roadbeds, rails, and rolling stock, and all other property of all railroads, and the pole lines and rights of way and all other property of all telegraph and telephone lines, electric power and transmission lines, ditches, canals and flumes, and other similar property, constituting a single and continuous property operated in more than one (1) county in the state, or more than one (1) state. To apportion such assessments to the counties in which such properties are located on a mileage basis, or if the property of any company assessable under this section is of such a character that its value cannot reasonably be apportioned on the basis of mileage, the department may adopt such other method or basis of apportionment to the county or counties in which the property is situated as may be just and proper. All lots and parcels of real estate not included in right of way, with the buildings, structures, and improvements thereon, dams and power houses, depots, stations, shops, and other buildings, erected upon right of way, furniture, machinery, and other personal property, shall not be considered as a part of any such single and continuous property, but shall be considered as separate and distinct therefrom, and shall be assessed by the agent of the department of revenue in the county wherein they are situate. (2) To transmit to the county clerk of each county its apportionment of all assessments made by the department"; inserted "may make rules" near the end of the first sentence of subsection (4); and made minor changes in phraseology, punctuation and style.

Chapter 566, Laws of 1977, made most of the same changes in this section as made by Ch. 98; deleted a former third sentence in subsection (4) reading "Further, the department shall determine if there is a need for a taxing, assessing, and appraising school, and such school shall be held, when deemed necessary"; deleted "and the cost of their attendance shall be borne by the state" at the end of subsection (4); and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 134, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 25, 1975.

Appellate Power

The department of revenue was granted the administrative powers previously held by the state board of equalization, but the appellate power of the former board was transferred to the state tax appeal board under the provisions of new section 84-708. Department of Revenue v. Burlington Northern, Inc., — M —, 545 P 2d 1083.

Determination of Accounting Method

Subsection (3) taken together with Art. VIII, § 3 of the Montana Constitution allows the department of revenue to determine the method of valuation that shall be used for tax assessment purposes. Montana Nat. Bank of Roundup v. State Department of Revenue, — M —, 539 P 2d 722.

84-708.2. Central reporting system for identification of corporations. It shall be the duty of the department of revenue to establish a central reporting system to assist in the identification of corporations, foreign and domestic, which transact business within the state of Montana and/or are subject to taxation by the state of Montana pursuant to the provisions of Title 84.

History: En. Sec. 1, Ch. 469, L. 1973.

Title of Act

An act to establish a central reporting system within the department of revenue to assist in the identification of corporations transacting business within the state of Montana and/or subject to taxation by the state of Montana; requiring the secretary of state and the department of labor

and industry to provide lists relating to corporations; providing for the administration of the act; providing for the lists as a public record; and providing an effective date.

84-708.3. Rules and regulations for central reporting system. The director of the department of revenue shall promulgate rules and regulations to accomplish the purposes of this act.

History: En. Sec. 2, Ch. 469, L. 1973.

84-708.4. List of corporations furnished by secretary of state. The secretary of state shall direct a list of all corporations, foreign and domestic, subject to the terms of Title 15, chapter 22, to the department of revenue. The list shall include the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana;

(4) such other information as the director of the department of revenue may require to administer the purposes of this act.

History: En. Sec. 3, Ch. 469, L. 1973.

84-708.5. Labor department to furnish list of corporations. The commissioner of the department of labor and industry shall direct a list of all corporations, foreign and domestic, subject to the terms of Title 87, chapter 1, to the department of revenue. The list shall include the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana;

(4) such other information as the director of the department of revenue may require to administer the purposes of this act.

History: En. Sec. 4, Ch. 469, L. 1973.

84-708.6. List of corporations compiled by revenue department. The department of revenue shall compile a list of all corporations, foreign and domestic, subject to taxation by the state of Montana under the terms of Title 84, to be filed in the central reporting system. Said list shall contain the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana;

(4) whether the corporation filed such reports, returns, and other information pursuant to the terms of Title 84, chapters 15 and 69.

History: En. Sec. 5, Ch. 469, L. 1973.

84-708.7. Cross-referencing of lists by department of revenue. The department of revenue shall maintain the lists referred to in sections 3, 4 and

5 [84-708.4, 84-708.5 and 84-708.6] in such a manner as to cross-reference the information contained in the lists for the purpose of determining whether corporations, foreign and domestic, have complied with the terms of Title 84, chapters 15 and 69, and the same list shall constitute a public record.

History: En. Sec. 6, Ch. 469, L. 1973.

84-708.8. Lists of corporations not open to inspection. The provisions of section 84-1507 shall not apply to the lists provided under the provisions of this act.

History: En. Sec. 7, Ch. 469, L. 1973.

Effective Date

Section 8 of Ch. 469, Laws 1973 read "This act shall be effective July 1, 1974."

84-708.9. Department audit of taxable value—costs of audit paid by county—penalty for underreporting. (1) When in the judgment of the director of revenue it is necessary, audits may be made for the purpose of determining the taxable value of net proceeds of mines and oil and gas wells, bank shares, business inventories, and all other types of property subject to ad valorem taxation. The costs incurred by the department of revenue, including per diem and mileage expense as well as salaries and benefits, shall be reimbursed from the amount collected as a result of the audit. In the event the property subject to audit is assessed within two or more counties the department shall allocate the cost among the collections due each of the counties. Reimbursement shall be made solely for audit expense and not for other services provided to the counties by the department and may not exceed the amounts collected.

(2) The taxable value of any underreported portion of any business inventory, found as a result of an audit to have been underreported by the owner, shall be increased by 25% as a penalty for underreporting.

(3) The 25% penalty may be waived by the department of revenue if reasonable cause for failure to report the total value of a business inventory is provided to the department.

History: En. 84-708.9 by Sec. 1, Ch. 235, L. 1975; amd. Sec. 1, Ch. 107, L. 1977.

Title of Act

An act to establish an audit fee as a charge against additional amounts collected as a result of audit services rendered by the department of revenue in determining the taxable value of net proceeds, bank shares, inventories, and other types of property subject to ad valorem taxation.

Amendments

The 1977 amendment designated the former section as subsection (1); added subsections (2) and (3); and made minor changes in punctuation and style.

Effective Date

Section 2 of Ch. 107, Laws 1977 read "This act is effective January 1, 1978."

84-708.10. Audit fee paid to general fund. The cost of the audit shall be paid to the state treasurer for credit to the general fund.

History: En. 84-708.10 by Sec. 2, Ch. 235, L. 1975.

84-709. (2122.9) **Appeal to state tax appeal board—hearing.** (1) Any person, firm, or corporation or the department of revenue in behalf of the state or any municipal corporation aggrieved by the action of any county

tax appeal board may appeal to the state board by filing with the county tax appeal board a notice of appeal and a duplicate thereof with the state board within 20 calendar days after the receipt of the decision of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. The county tax appeal boards shall mail their decisions to the property assessment division of the department of revenue. Receipt for purposes of appeal by the department of revenue is when the county tax appeal board decision is received by the property assessment division of the department of revenue. The state board shall set such appeal for hearing either in its office in the capital or such county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest and shall give to the appellant and to the county board at least 15 calendar days' notice of the time and place of such hearing.

(2) At the time of giving such notice the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith, and the state board may, in its discretion, determine the appeal on such record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work the state board may refer any such appeal to one of its members, and the person so designated shall have and exercise all the powers of the board in conducting such hearings and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board, and the state board shall determine such appeal on the record so made.

(3) On all hearings at county seats throughout the state, the state board or the member designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received, and the cost thereof may be paid out of the general appropriation for the board.

(4) In connection with any appeal under this section the state board shall not be bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. The decision of the state tax appeal board shall be final and binding upon all interested parties unless reversed or modified by judicial review. To the extent this section is in conflict with the Montana Administrative Procedure Act, this section shall supersede that act. The state tax appeal board may not amend or repeal any administrative rule of the department of revenue. The state tax appeal board must give an administrative rule full effect unless the board finds any such rule arbitrary, capricious, or otherwise unlawful.

History: En. Sec. 9, Ch. 3, L. 1923; amd. Sec. 1, Ch. 33, L. 1939; amd. Sec. 54, Ch. 405, L. 1973; amd. Sec. 4, Ch. 38, L. 1974; amd. Sec. 1, Ch. 277, L. 1974; amd. Sec. 1, Ch. 155, L. 1977; amd. Sec. 1, ch. 249, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 155 and once by Ch. 249. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization; substituted references to county tax

appeal boards for references to county boards of equalization; deleted "to its secretary, counsel or chief auditor for the conduct of such hearing," following "refer any such appeal to one of its members" in the third sentence; and made a minor change in style.

Chapter 38, Laws of 1974, substituted "after the receipt of the decision" for "after the action" before "of the county board" in the first sentence and made minor changes in style.

Chapter 277, Laws of 1974, inserted "if all parties receive a copy of the transcript and are permitted to submit additional sworn statements" after "appeal on such record" in the second sentence and added the last three sentences.

Chapter 155, Laws of 1977, divided the section into subsections; substituted "capital" in the last sentence of subsection (1) for "capitol"; inserted "shall not be bound by common law and statutory rules of evidence or rules of discovery" in the first sentence of subsection (4); substituted "any administrative rule of the department of revenue" at the end of the fourth sentence of subsection (4) for "any administrative rule or regulation"; and made minor changes in phraseology, punctuation and style.

Chapter 249, Laws of 1977, substituted "within 20 calendar days" in the first sentence of subsection (1) for "within ten (10) days"; inserted the second and third sentences of subsection (1); substituted "15 calendar days' notice" in the last sentence of subsection (1) for "five (5) days' notice"; and made minor changes in punctuation and style.

Effective Dates

Section 5 of Ch. 38, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved February 25, 1974.

Section 2 of Ch. 249, Laws 1977 provided the act should be effective on its passage and approval. Approved April 4, 1977.

Administrative Remedies Bypassed

Class action suit protesting method of assessment as being unconstitutional was properly filed directly against the department of revenue without first exhausting administrative remedies. Larson v. State, — M —, 534 P 2d 854.

Scope of Review

So long as the department of revenue acts pursuant to an administrative rule or regulation its decisions are entitled to a presumption of correctness, unless the rule or regulation is arbitrary, capricious, or otherwise unlawful; but there is no presumption of correctness where the department has made an ad hoc determination unaided by rule or regulation, and in such cases the board may examine the department's procedures to determine whether they were fair, and whether the result is fair, just and equitable; in order to do this the board may conduct a hearing de novo at which it may examine the entire record sent by the department, and may supplement it by taking additional testimony and receiving additional evidence. Department of Revenue v. Burlington Northern, Inc., — M —, 545 P 2d 1083.

84-709.1. Judicial review of contested cases. (1) Any party to an appeal before the state tax appeal board who is aggrieved by a final decision in a contested case is entitled to judicial review under this act.

(2) Proceedings for review shall be instituted by filing a petition in district court in the county wherein the taxable property or some portion thereof is located, except the taxpayer may, at his option, file in the district court of the first judicial district, and serving a copy of the petition on the state tax appeal board, within thirty (30) days after service of the final decision of the state tax appeal board, or if a rehearing is requested within thirty (30) days after the decision thereon. All parties to the appeal shall cause to be served on the state tax appeal board a copy of all pleadings and documents they shall file in such proceedings.

(3) Notwithstanding the provisions of section 82-4216, subsection (6), the court may, for good cause shown, permit additional evidence to be introduced.

(4) Notwithstanding any other provision, proceedings for review of a decision by the state tax appeal board by a company under the jurisdiction of the public service commission shall be instituted in the district court of the first judicial district.

History: En. 84-708.1 by Sec. 52 (b), Ch. 405, L. 1973; amd. Sec. 2, Ch. 277, L. 1974; amd. Sec. 1, Ch. 346, L. 1975; amd. Sec. 1, Ch. 404, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 346 and once by Ch. 404. Neither amendatory act mentioned or included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment inserted "and serving a copy thereof on the state tax appeal board" in the first sentence of subsection (2) and added the second sentence in subsection (2).

Chapter 346, Laws of 1975, inserted "in the county wherein the taxable property * * * of the first judicial district" in the sentence of subsection (2); and added subsection (4).

Chapter 404, Laws of 1975, added subsection (3).

Mootness

Payment of tax fifteen days prior to filing petition for judicial review was not satisfaction of a judgment and did not preclude appeal of the tax assessment. Montana Nat. Bank of Roundup v. State Department of Revenue, — M —, 539 P 2d 722.

84-709.2. Petition for interlocutory adjudication. After a proceeding has commenced before a county tax appeals board, or the state tax appeals board, but before arguments have been heard, the parties to the proceeding may petition a district court to make an interlocutory adjudication as provided under section 84-709.3. A petition for such adjudication shall be signed by each party to the proceeding. One party shall be designated as the petitioner and every other party shall be designated a respondent. The court may in its discretion grant such a petition if it appears that the issues presented involve the interpretation of a constitutional provision, statute or regulation and do not require the hearing of evidence to be resolved, and that the controversy would be more expeditiously resolved by such adjudication.

History: En. 84-709.2 by Sec. 2, Ch. 404, L. 1975.

Title of Act

An act to revise tax appeals procedures by providing for the reception of additional evidence on judicial review; amending section 84-709.1, R. C. M. 1947.

84-709.3. Jurisdiction to make interlocutory adjudication. A district court may make an interlocutory adjudication of an issue pending in a county or state tax appeals board if that issue involves only the interpretation of a constitutional provision, statute or regulation and does not require the hearing of evidence. Appeals from the ruling of the court may be appealed as in other civil actions.

History: En. 84-709.3 by Sec. 3, Ch. 404, L. 1975.

84-709.4. Direct appeal from department decision to state tax appeal board—hearing. (1) A person may appeal to the state tax appeal board any action of the department of revenue involving:

(a) property centrally assessed under chapters 8, 9, 13, 54, 62, or 64 of this title;

(b) classification of property as new industrial property;

(c) any other tax (other than the property tax) imposed under this title; or

(d) any other matter in which such appeal is provided by law.

(2) The appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department action. The complaint shall set forth the grounds for relief and nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

(3) The department shall file with the board an answer within 30 days following filing of a complaint, and at such time mail a copy to the complainant. The answer shall set forth the department's response to each ground for and type of relief demanded in the complaint.

(4) The board shall thereafter hear the parties in accordance with the contested case provisions of the Montana Administrative Procedure Act.

History: En. 84-709.4 by Sec. 2, Ch. 155, L. 1977.

Title of Act

An act to allocate the duties of conducting administrative tax case hearings between the department of revenue and the state tax appeal board; specifying procedures in appeals from county tax appeal board decisions and from department decisions; abolishing procedures inconsistent therewith; amending sections 67-2220, 67-2221, 84-603, 84-709, 84-711, 84-1841, 84-4923.1, 84-5606.24, and 84-5606.25, R. C. M. 1947; repealing sections 84-440, 84-602, 84-609, and 84-710, R. C. M. 1947.

84-710. (2122.10) **Repealed.**

Repeal

Section 84-710 (Sec. 10, Ch. 3, L. 1923; Sec. 1, Ch. 89, L. 1959; Sec. 55, Ch. 405, L. 1973), relating to notice required of department before changing assessments, was repealed by Sec. 11, Ch. 155, Laws 1977.

84-711. (2122.11) **Assessment of omitted property—limitation.** (1) Whenever the department of revenue in any year discovers that any taxable property of any person has escaped assessment, has been erroneously assessed, or has been omitted from taxation, the department may assess the same, provided the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All such revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

(2) Whenever the department or its agent proposes to increase the valuation of locally assessed property above the value reported by the taxpayer under 84-409, the action of the department is subject to the notice and conference provisions of this section.

(3) (a) Notice of revised assessment pursuant to this section shall be made by the department or its agent by postpaid letter addressed to the person interested within 10 days after the revised assessment has been made. The notice shall include opportunity for a conference on the matter, at the request of the person interested, not less than 15 or more than 30 days after notice is given.

(b) An assessment revision review conference is not a contested case as defined in the Montana Administrative Procedure Act. The department shall keep minutes of each assessment review conference in writing, which are public records.

(c) Following an assessment review conference or expiration of opportunity therefor, the department shall order such assessment as it considers proper. Any party to the conference aggrieved by the action of the

department may appeal directly to the state tax appeal board within 30 days or, if the property is locally assessed, may appeal to the county tax appeal board at its next meeting.

(4) Immediately upon receipt of a revised assessment, the county official possessing the assessment roll book shall enter the revised assessment. If the revised assessment corrects an original assessment, the previous entry shall be canceled upon order of the department.

History: En. Sec. 11, Ch. 3, L. 1923; amd. Sec. 56, Ch. 405, L. 1973; amd. Sec. 4, Ch. 155, L. 1977.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization; and substituted references to the agent of the department of revenue for references to the county assessor.

The 1977 amendment rewrote subsection (1); and added subsections (2) through (4). For prior text, see parent volume and 1973 amendment note.

84-712. (2122.12) **Statement of changes to be sent to county clerk.** The department of revenue shall transmit to each county clerk a statement of the changes made by the department in the assessment book of the county, or any assessment contained therein, which shall be prima facie evidence of the regularity of all proceedings of the department resulting in the action which is the subject matter of the statement.

History: En. Sec. 12, Ch. 3, L. 1923; amd. Sec. 57, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "secretary of the board" near the beginning; and substituted references to the department for references to the board.

84-713. (2122.13) **Repealed.**

Repeal

Section 84-713 (Sec. 13, Ch. 3, L. 1923; Sec. 1, Ch. 19, L. 1969; Sec. 7, Ch. 516, L. 1973; Sec. 1, Ch. 345, L. 1977), relating to the rate of state tax, was repealed by Sec. 15, Ch. 126, Laws 1977.

84-714. (2122.14) **Penalty for refusal to furnish information.** If any person shall refuse inspection of any books or records when requested by the department or its authorized agent, or shall refuse or neglect to furnish any information called for by the department in the performance of its official duties relating to the assessment and taxation of property the department shall make such determination and assessment of his or its property as in its judgment appears to be just and equitable, and may add to its assessment thus made not more than twenty per cent thereof as a penalty for such refusal or neglect. The department shall immediately notify the person so assessed of its action, either by registered mail or by personal service of such notice. Such action of the department and the assessment so made shall be final and conclusive unless the party so assessed, (1) shall, within twenty days after receiving such notice file an appeal with the state tax appeal board and show cause before the board why such assessment and penalty should be modified or annulled, when the board shall then from all information presented to it or from its own investigation make such assessment as to it seems just and equitable; or, (2) unless the party assessed shall within sixty (60) days after receiving such notice, appeal to the district court of Lewis and Clark county from the action of

the department in making such assessment and imposing such penalty by serving on the department and filing in the office of the clerk of said district court notice of appeal therefrom together with a bond conditioned for the payment of such amount as the judgment of said court may require within thirty (30) days after the entry of such judgment. Upon the hearing of such appeal the court or the state tax appeal board shall determine whether the department of revenue was entitled to inspect such books or records, or was entitled to the information requested by the department, and if the court or board shall find that the department was entitled to inspect such books or records or was entitled to the information requested by the department, the court or board shall not change or modify in any manner the assessment as made or the penalty added to such assessment by the department but if the court or board shall find that the department was not entitled to inspect such books or records, or was not entitled to the information requested by the department, then the court or board shall enter a judgment changing and modifying the assessment made by the department by striking out the penalty added thereto by the department.

History: En. Sec. 14, Ch. 3, L. 1923; amd. Sec. 58, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization; substituted "file an appeal with the state tax appeal board" for "furnish all information requested by the board" in clause (1) of the second sentence; and inserted references to the state tax appeal board following references to the court in the last sentence.

84-715. (2122.15) **Duties of public officers.** It shall be the duty of all public officers of the state and of any municipality to give to the department information in their possession relating to taxation when required by the department, and to co-operate with and aid the department in every manner in its efforts to secure a fair, equitable and just enforcement of the taxation and revenue laws of the state.

History: En. Sec. 15, Ch. 3, L. 1923; amd. Sec. 8, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

84-716. (2122.16) **Hearings, witnesses, contempt, fees and subpoenas.** Oaths to witnesses in any investigation by the department may be administered by the director of revenue or his agent. In case any witness shall fail to obey any summons to appear before the department, or shall refuse to testify, or answer any material question, or to produce records, books, papers or documents when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the board, or to punish the witness for such neglect or refusal. Any person who shall testify falsely in any material matter, under consideration by the department shall be guilty of perjury and punished accordingly. Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the department.

History: En. Sec. 16, Ch. 3, L. 1923; amd. Sec. 59, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for

references to the state board of equalization; and substituted "director of revenue or his agent" for "secretary or a member of the board" at the end of the first sentence.

84-717. (2122.17) **Seal.** The state tax appeal board shall have a seal and such seal shall have the following words engraved thereon. "Tax Appeal Board of the State of Montana." The board shall authenticate all of its orders, records and proceedings with such seal, and the courts of this state shall take judicial notice of such seal.

History: En. Sec. 17, Ch. 3, L. 1923; amd. Sec. 60, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "tax appeal board" for "board of equalization" in two places.

84-719 to 84-722. (2122.19 to 2122.22) **Repealed.**

Repeal

Sections 84-719 to 84-722 (Secs. 1 to 4, Ch. 180, L. 1925; Secs. 9 to 12, Ch. 516, L. 1973), relating to assessment and apportionment of property by the department, were repealed by Sec. 22, Ch. 98, Laws 1977.

84-723. (2122.23) **Collection of nonresident inheritance taxes, gross earnings on freight lines, license taxes by state department of revenue.** The duty of collecting the nonresident inheritance taxes, all gross earning taxes on freight lines, and the following license taxes, to wit: The corporation license tax, taxes on express companies and sleeping car companies, coal mines, and dealers license taxes, metalliferous mines license tax, cement producers and dealers license taxes, the gasoline distributors and dealers license tax, the oil producer's license tax and all other license taxes determined by the state department of revenue, the responsibility for collection of which has heretofore been imposed upon the state treasurer are hereby transferred from the state treasurer to the state department of revenue; such collections to be deposited with the state treasurer as required by law, and it is further provided that all duties heretofore imposed by law upon the state treasurer, with reference to the collection and issuance of receipts for any of the above named license taxes, or other taxes above enumerated, are hereby imposed upon the state department of revenue.

History: En. Sec. 1, Ch. 79, L. 1927; amd. Sec. 13, Ch. 516, L. 1973; amd. Sec. 7, Ch. 286, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places; and made a minor change in phraseology.

The 1977 amendment substituted "deposited with the state treasurer as required by law" near the end of the section for "turned over to the state treasurer on the 10th and 25th day of each and every month."

84-724. Destruction of tax records authorized—procedure. Notwithstanding the provisions of any other chapter of this code, the state department of revenue is authorized to destroy tax records more than three (3) years old, as shall be determined to be of no further value.

Authorization for destruction of tax records shall be by the director of revenue or authorized employees of the department of revenue. A copy of the authorization and authenticated list shall be maintained by the department of revenue.

History: En. Sec. 1, Ch. 187, L. 1963; amd. Sec. 1, Ch. 9, L. 1969; amd. Sec. 61, Ch. 405, L. 1973.

Amendments

The 1969 amendment substituted "three (3) years old" for "five (5) years old" after "tax record more than" in the first paragraph.

The 1973 amendment substituted "department of revenue" for "board of equalization" in the first paragraph; substituted "the director of revenue or authorized employees of the department of revenue" for "unanimous vote of the members of the state board of equalization entered upon on authenticated list of records authorized to be destroyed" at the end of the first sentence in the second paragraph; and substituted "maintained by the department of revenue" for "entered in the minutes of the board by its secretary" at the end of the second sentence in the second paragraph.

Effective Date

Section 2 of Ch. 9, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

84-725. Suspense account for receipts and refunds. The state department of revenue shall establish a suspense account in the state treasury for the purpose of conveniently processing receipts and for paying refunds for overpayments of inheritance taxes collected by county treasurers and all other taxes collected by the department. All moneys received by the department shall be temporarily credited by the state treasurer to the department's suspense account. Each month the department shall send to the treasurer and to the controller a distribution sheet designating the amount to be deposited in each treasury fund and in each account.

History: En. Sec. 1, Ch. 126, L. 1963; amd. Sec. 14, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section.

84-726. Refund of overpayments—time of filing claims for refund—procedure. (1) When there has been an overpayment of the inheritance tax collected by county treasurers or any other tax collected by the state department of revenue, and there is no law providing for a refund, the department shall refund the amount of the overpayment to the taxpayer, plus any interest and penalty due the taxpayer, as provided in subsection (2) of this section.

(2) No refund or payment shall be allowed unless a claim is filed by the taxpayer before the expiration of five (5) years from the time the tax was paid. Within six (6) months after the claim is filed the state department of revenue shall examine the claim and either approve or disapprove it. If the claim is approved the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state department of revenue shall so notify the taxpayer and shall grant a hearing on the claim. If the department disapproves a claim after holding a hearing, the determination of the department may be reviewed as provided by section 84-4923.1.

History: En. Sec. 2, Ch. 126, L. 1963; amd. Sec. 15, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section.

84-727. Assessment of proportionally registered interstate motor vehicle fleets—full or partial year—tax payment required for registration. The

state department of revenue shall assess, for the purpose of personal property taxes, interstate motor vehicle fleets proportionally registered under the provisions of sections 53-701 to 53-724, and said assessment shall be apportioned on the ratio of total miles traveled to in-state miles traveled formula as prescribed by section 53-712. Interstate motor vehicle fleets are hereby declared assessable for taxation purposes upon application for proportional registration and shall be assessed to the persons who own or claim, or in whose possession or control the fleet is at the time of the application. Any fleet contained in an original application which has a situs for purpose of property taxation in Montana by the terms of this act or any other provision of the laws of Montana between January 1st and April 1st shall be taxed for a full year. Any fleet contained in an original application which acquires a situs for the purpose of property taxation in Montana under the provisions of this act or any other law of the state of Montana after April 1st shall have taxes apportioned as provided in section 84-6011. Any fleet, contained in a renewal application, shall be assessed and taxed for a full year. Vehicles contained in a fleet for which current taxes have been assessed and paid shall not be assessed under this section upon presentation to the department of revenue of proof of payment of tax for the current registration year. The payment of personal property taxes are a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet.

History: En. Sec. 1, Ch. 89, L. 1965; amd. Sec. 16, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the first and sixth sentences.

84-728. Valuation of interstate fleets—determination of aggregate tax due. The state department of revenue shall assess any interstate motor vehicle fleet making application for proportional registration as follows:

(1) The purchase price depreciated by a schedule as prescribed by the department shall determine the depreciated value.

(2) The depreciated value multiplied by the percent of miles traveled in Montana as prescribed by 53-712 shall be the assessed value.

(3) The sum of the assessed value of all vehicles included in the fleet multiplied by 12% shall be the taxable value for the entire fleet.

(4) To determine the amount of tax due, the taxable value of the entire fleet shall be multiplied by the statewide average county mill levy plus state levies as hereinafter provided.

History: En. Sec. 2, Ch. 89, L. 1965; amd. Sec. 17, Ch. 516, L. 1973; amd. Sec. 54, Ch. 566, L. 1977.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in the preliminary clause and in subdivision (a).

The 1977 amendment redesignated subdivisions (a) to (d) as subdivisions (1) to (4); reduced the multiplier in subsection (3) from 20% to 12%; and made minor changes in style.

84-729. Determination of average levy in state—application to interstate fleets—cost stated in application for registration. The state department of revenue shall determine the aggregate tax in the entire state for:

(1) state, (2) county, (3) local purposes, levied on the general property of the state in the previous year excluding special levies on property for local improvements and special state levies on livestock for bounties, inspection and protection purposes.

From the total taxable valuation of the general property of the state including net proceeds and the aggregate tax as determined, the state department of revenue shall compute the average levy by dividing the aggregate tax by the total state taxable valuation. The rate so determined shall constitute the rate of taxation on the taxable value of all interstate trucks.

The original cost of each vehicle shall be included on the application for proportional registration under the provisions of sections 53-701 to 53-724. The department shall determine the original cost when the owner does not have this information on new or used vehicles, or in the case of rebuilt vehicles.

History: En. Sec. 3, Ch. 89, L. 1965; amd. Sec. 18, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in each of the three paragraphs.

84-730. Situs in state of proportionally registered fleets—collection of property tax. For the purposes of this section, all vehicles previously registered or which registration has been applied for, under the provisions of sections 53-701 to 53-724, are hereby declared to have a situs in the state for the purposes of taxation.

The department or its designated agent shall collect the personal property taxes prescribed herein.

History: En. Sec. 4, Ch. 89, L. 1965; amd. Sec. 19, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in the second paragraph.

84-732. Certified copies of corporation license and income tax returns furnished to taxpayer—fee. Certified copies of returns filed for corporation license tax under section 84-1504, and certified copies of returns filed for income tax under section 84-4919, may be furnished by the department of revenue to the taxpayer or his duly authorized representative upon payment of fifty cents (50¢) for each page.

History: En. Sec. 1, Ch. 187, L. 1965; amd. Sec. 20, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-733. Corporation license tax clearance certificates furnished—fee. Upon request of a corporation and upon the payment of one dollar ($1) the department of revenue may furnish to it a certificate to the effect that all taxes have been paid, that a return has been filed and that all information has been supplied as required by the provisions of the Corporation License Tax Act.

History: En. Sec. 2, Ch. 187, L. 1965; amd. Sec. 21, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-734. Fees to reimburse department for costs—deposit in general fund. All moneys collected under this act shall be required to reimburse the state department of revenue for costs involved in the preparation of the copies and certificates. All such moneys collected shall go into the general fund of the state of Montana.

History: En. Sec. 3, Ch. 187, L. 1965; amd. Sec. 22, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 8—RAILROADS OPERATING IN MORE THAN ONE COUNTY—ASSESSMENT FRANCHISE, ETC. BY STATE DEPARTMENT OF REVENUE

Section
84-801. **Assessment of railroads.**
84-802. Assessment—how made.

84-801. (2131) **Assessment of railroads.** The president, secretary, or managing agent or such other officer as the department of revenue may designate of any corporation and each person or association of persons owning or operating any railroad in more than one county in this state or more than one state must on or before April 15 each year furnish the department a statement signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending December 31, immediately preceding:

(1) the whole number of miles of railroads in the state and, where the line is partly out of the state, the whole number of miles without the state, and the whole number within the state, owned or operated by such corporation, person, or association;

(2) the value of the roadway, roadbed, and rails of the whole railroad and the value of the same within the state;

(3) the width of the right-of-way;

(4) the number of each kind of all rolling stock used by such corporation, person, or association in operating the entire railroad, including the part without the state;

(5) the number, kind, and value of rolling stock owned and operated in the state;

(6) the number, kind, and value of rolling stock used in the state but not owned by the party making the returns;

(7) the number, kind, and value of rolling stock owned but used out of the state, either upon divisions of road operated by the party making the returns or by and upon other railroads;

(8) the whole number of sidetracks in each county, including the number of miles of track in each railroad yard in the state;

(9) the number of each kind of rolling stock used in operating the entire railroad, including the part without the state, which must include a detailed statement of the number and value thereof of all engines, passenger, mail, express, baggage, freight, and other cars or property owned or leased by such corporation, persons, or association;

(10) the number of sleeping and dining cars not owned by such corporation, person, or association but used in operating the railroads of such corporation, person, or association in the state or on the line of the road without the state during each month of the year for which the return is made; also the number of miles each month the cars have been run or operated within and without the state;

(11) a description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road has once been given, no other annual description thereof is necessary unless the road has been changed. Whenever the road or any portion of the road is advertised to be sold or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad or the right-of-way for the same. If such statement is not furnished as above provided, the assessment made by the department of revenue upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

(12) the gross earnings of the entire road;

(13) the gross earnings of the road within the state and if the railroad is let to other operators, how much was derived by the lessor as rental;

(14) the cost of operating the entire road, exclusive of sinking fund, expenses of land department, and money paid to the United States;

(15) net income for such year and amount of dividend declared;

(16) capital stock authorized;

(17) capital stock paid in;

(18) funded debt;

(19) number of shares authorized;

(20) number of shares of stock issued;

(21) any other facts the department may require.

History: Ap. p. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 43, p. 87, L. 1891; re-en. Sec. 3737, Pol. C. 1895; re-en. Sec. 2556, Rev. C. 1907; re-en. Sec. 2131, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1925; amd. Sec. 23, Ch. 516, L. 1973; amd. Sec. 10, Ch. 98, L. 1977; amd. Sec. 1, Ch. 494, L. 1977. Cal. Pol. C. Sec. 3664.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 98 and once by Ch. 494. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in the preliminary clause and subdivisions (11) and (13); and made a minor change in style.

Chapter 98, Laws of 1977, inserted "or more than one state" in the middle of the introductory paragraph; deleted "on or before the first day of April of" after "must" in the introductory paragraph; substituted "not owned" in subdivision (6) for "now owned"; substituted subdivisions (12) through (20) for former subdivision (12) as it appears in the parent volume; redesignated former subdivision (13) as (21); and made minor changes in phraseology, punctuation and style.

Chapter 494, Laws of 1977, substituted "April 15" in the middle of the introductory paragraph for "the first day of April."

84-802. (2132) **Assessment—how made.** The department must assess the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county. All rolling stock must be assessed in the name of the person, corporation, or association owning, leasing, or using the same. Assessment must be made to the corporation, person, or association of persons owning or leasing or using the same and must be made upon the entire railroad within the state. The depots, stations, shops, and buildings erected upon the space covered by the right-of-way and all other property owned or leased by such person, corporation, or association, except as above provided, shall be assessed by an agent of the department in the county where they are located.

History: Ap. p. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 44, p. 89, L. 1891; re-en. Sec. 3738, Pol. C. 1895; re-en. Sec. 2557, Rev. C. 1907; re-en. Sec. 2132, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1939; amd. Sec. 62(a), Ch. 405, L. 1973; amd. Sec. 11, Ch. 98, L. 1977. Cal. Pol. C. Sec. 3665.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state department of equalization; deleted "but franchises derived from the United States must not be assessed" from the end of the first sentence; substituted "an agent of the state department of revenue in" for "the assessor of" near the end of the fourth sentence; deleted "at least ten (10) days" before "written notice" in the fifth sentence; deleted "designating therein a time and place for hearing thereon, at which time and place" from the end of the present fifth sentence; divided the former fifth sentence into the fifth and sixth sentences; and inserted "Within ten (10) days" at the beginning of the sixth sentence.

The 1977 amendment deleted the last three sentences which read "After making such assessment, the department shall give written notice thereof to such owner or operator. Within ten (10) days the owner or operator, or any taxpayer, may appear at the department of revenue in person, or otherwise, to show cause why such assessment should be either lowered or raised. On or before the second Monday in July, the department shall apportion such assessment to the counties, school districts, cities, towns, and other tax subdivision, in which such railroad is located"; and made minor changes in phraseology, punctuation and style.

84-802.1. Repealed.

Repeal

Section 84-802.1 (Sec. 62(b), Ch. 405, L. 1973), relating to appeals to the state tax appeal board, was repealed by Sec. 22, Ch. 98, Laws 1977.

84-803, 84-804. (2133, 2136) **Repealed.**

Repeal

Sections 84-803, 84-804 (Sec. 45, p. 90, L. 1891; Sec. 48, p. 92, L. 1891; Secs. 2, 3, Ch. 13, L. 1939; Sec. 63, Ch. 405, L. 1973; Sec. 24, Ch. 516, L. 1973; Sec. 2, Ch. 465, L. 1975), relating to railroad assessment and apportionment records, were repealed by Sec. 22, Ch. 98, Laws 1977.

CHAPTER 9—TELEGRAPH, TELEPHONE, ELECTRIC POWER AND OTHER LINES—ASSESSMENT BY STATE DEPARTMENT OF REVENUE

Section

84-901. Officers of certain telegraph, telephone, electric power, and other lines to furnish statement to department.
84-902. Statement to be transmitted by agent of the department of revenue to the state department of revenue.
84-905. Assessment of property—apportionment to counties.

84-901. (2138) **Officers of certain telegraph, telephone, electric power, and other lines to furnish statement to department.** The president, secre-

tary, or managing agent or such other officer as the department of revenue may designate of any corporation and each person or association of persons owning or operating a telegraph, telephone, microwave, electric power or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other property, other than real estate not included in right-of-way, and which constitute a single and continuous property throughout more than one county or state, must each year furnish the department a statement, signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending on December 31, immediately preceding, as follows:

(1) the whole number of miles of said property in the state, and where the property is partly out of the state, the whole number of miles without the state and the whole number of miles within the state owned or operated by such corporation, person, or association;

(2) the total value of the entire property and plant both within and without the state and the total value of that portion of the same within the state;

(3) a complete description of the property within the state, giving the points of entrance into and the points of exit from the state and the points of entrance into and the points of exit from each county, with a statement of the total number of miles in each county in the state;

(4) such other information regarding such property as may be required by the department.

History: En. Sec. 1, Ch. 49, L. 1919; re-en. Sec. 2138, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1939; amd. Sec. 25, Ch. 516, L. 1973; amd. Sec. 1, Ch. 50, L. 1974; amd. Sec. 1, Ch. 210, L. 1975; amd. Sec. 12, Ch. 98, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the preliminary clause and in subdivision 4.

The 1974 amendment inserted "microwave" after "telephone" near the beginning of the section.

The 1975 amendment inserted "or state" in the middle of the first paragraph after "more than one county."

The 1977 amendment deleted the requirement that the statement had to be furnished to the department on or before the first Monday of March in each year; and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 50, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved February 27, 1974.

84-902. Statement to be transmitted by agent of the department of revenue to the state department of revenue. The agent of the department in every county must, on the first Monday in May of each year, transmit to the state department of revenue a statement showing:

1. The name and address of each corporation, person and association owning or operating any telegraph, telephone, electric power or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other similar property in more than one county or state, whose property, or any part thereof, has been assessed by the agent of the department.

2. * * * [Same as parent volume.]

3. After making such assessment, the department shall give written notice thereof to the person or persons to whom the assessment is made.

History: En. Sec. 2, Ch. 49, L. 1919; re-en. Sec. 2139, R. C. M. 1921; amd. Sec. 2, Ch. 17, L. 1939; amd. Sec. 64, Ch. 405, L. 1973; amd. Sec. 2, Ch. 210, L. 1975.

Amendments

The 1973 amendment substituted references to the agent of the department of revenue for references to the county assessor; substituted references to the state department of revenue for references to the state board of equalization; and added subdivision 3.

The 1975 amendment substituted "county or state" in subdivision 1 for "county of the state."

84-903. (2141) Repealed.

Repeal

Section 84-903 (Sec. 4, Ch. 49, L. 1919; Sec. 5, Ch. 17, L. 1939; Sec. 65(a), Ch. 405, L. 1973), relating to appearance by taxpayer at department of revenue, was repealed by Sec. 22, Ch. 98, Laws 1977.

84-903.1. Repealed.

Repeal

Section 84-903.1 (Sec. 65(b), Ch. 405, L. 1973), relating to appeal to state tax appeal board, was repealed by Sec. 22, Ch. 98, Laws 1977.

84-904. (2142) Repealed.

Repeal

Section 84-904 (Sec. 5, Ch. 49, L. 1919; Sec. 3, Ch. 17, L. 1939; Sec. 26, Ch. 516, L. 1973), relating to hearings on assessments, was repealed by Sec. 22, Ch. 98, Laws 1977.

84-905. (2143) Assessment of property—apportionment to counties.

The department must assess all the properties described in 84-901, but franchises granted by the United States must not be assessed, the value of such properties for assessment purposes to be determined upon such factors as the department considers proper.

History: En. Sec. 6, Ch. 49, L. 1919; re-en. Sec. 2143, R. C. M. 1921; amd. Sec. 4, Ch. 17, L. 1939; amd. Sec. 27, Ch. 516, amd. Sec. 3, Ch. 465, L. 1975; amd. Sec. 13, Ch. 98, L. 1977.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

The 1977 amendment deleted a last paragraph reading "On or before the second Monday in July, the department shall apportion such assessment to the counties in which the properties are situated"; and made minor changes in phraseology and style.

84-906, 84-907. (2144, 2146) Repealed.

Repeal

Sections 84-906, 84-907 (Secs. 7, 9, Ch. 49, L. 1919; Secs. 6, 7, Ch. 17, L. 1939; Sec. 66, Ch. 405, L. 1973; Sec. 28, Ch. 516, L. 1973; Sec. 3, Ch. 210, L. 1975; Sec. 3, Ch. 465, L. 1975), relating to statements and records of assessment and apportionment, were repealed by Sec. 22, Ch. 98, Laws 1977.

CHAPTER 10—LICENSE TAXES—CARBON BLACK PRODUCERS

(Repealed—Section 1, Chapter 370, Laws of 1973)

84-1001 to 84-1010. (2380.1 to 2380.10) Repealed.

Repeal

Sections 84-1001 to 84-1010 (Secs. 1 to 10, Ch. 97, L. 1929), relating to a tax on production of carbon black, were repealed by Sec. 1, Ch. 370, Laws of 1973. Chapter 516, Laws of 1973, purported to amend secs. 84-1004 to 84-1006 and 84-1008. However, the amendments were void under the rule of sec. 43-515.

CHAPTER 11—LICENSE TAXES—CEMENT DEALERS

Section
84-1102. License tax on sales of cement and byproducts.
84-1103. Statement to be filed with state department of revenue.
84-1104. Quarterly payment of license tax.
84-1105. Record of cement received.
84-1106. Quarterly statement of products sold on which no tax paid—payment of tax.
84-1108. Procedure to ascertain tax on failure to file statement—penalty—tax lien.
84-1108.1. Procedure for collection of tax.

84-1101. (2367) **Repealed.**

Repeal

Section 84-1101 (Sec. 1, Ch. 16, Ex. L. 1921), relating to the definition of person, was repealed by Sec. 24, Ch. 52, Laws 1977.

84-1102. (2368) **License tax on sales of cement and byproducts.** Every person who engages in or carries on the occupation or business in this state of retailing or selling at retail cement, cement plaster, gypsum plaster, or other byproducts of cement must pay to the department of revenue a license tax for engaging in and carrying on such business in an amount equal to 22 cents per ton of cement and 5 cents per ton on cement plaster, gypsum plaster, or other byproducts of cement sold by such person during such year and for the manufacturing or producing of which no person has paid or assumed a liability for the payment of any license tax to the state of Montana under any law of this state.

History: En. Sec. 2, Ch. 16, Ex. L. 1921; re-en. Sec. 2368, R. C. M. 1921; amd. Sec. 2, Ch. 127, L. 1925; amd. Sec. 1, Ch. 127, L. 1975; amd. Sec. 1, Ch. 106, L. 1977.

Amendments

The 1975 amendment deleted "annually" before "each year thereafter"; and substituted "pay to the state department of revenue a license tax, for engaging in and carrying on such business, in an amount" for "procure from the state treasurer a license to engage in and carry on such occupation or business in this state and shall annually pay to the state treasurer for such license a tax of one dollar, together with an additional sum or amount."

The 1977 amendment deleted "for the year 1921, and each year thereafter when engaged in such occupation or business" before "pay to the department of revenue" near the middle of the section; substituted "22 cents per ton" near the middle of the section for "four cents per barrel of three hundred seventy-six pounds"; and made minor changes in phraseology, punctuation and style.

Cross-References

Multistate tax compact, sec. 84-6701.

84-1103. (2369) **Statement to be filed with state department of revenue.** Each and every person engaged in or carrying on such occupation or business in the state of Montana at the date when this act becomes effective must, not later than the thirtieth day of April, 1921, and every person who shall engage in or carry on such occupation or business after the date when this act becomes effective must immediately after engaging in such occupation or business, make out and file with the state department of revenue a certificate and statement, on forms prescribed by the state department of revenue, which shall contain the name under which such person is engaging in and carrying on such occupation and business in this state, giving the location of each place of business of such person, the name and address of the managing agent in this state, if any association, joint-stock company, syndicate or corporation, or if a firm or copartnership the names and addresses of the persons composing the same; if an

association, joint-stock company, syndicate or corporation, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers, and such other information as the state department of revenue may require.

History: En. Sec. 3, Ch. 16, Ex. L. 1921; re-en. Sec. 2369, R. C. M. 1921; amd. Sec. 33, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-1104. (2370) **Quarterly payment of license tax.** The license tax of 22 cents per ton and 5 cents per ton shall be paid in quarterly installments for the quarters ending March 31, June 30, September 30, and December 31 in each year, and the total amount of such license tax becoming due for any quarter shall be paid to the department of revenue within 30 days after the end of the quarter for which the same is due.

History: En. Sec. 4, Ch. 16, Ex. L. 1921; re-en. Sec. 2370, R. C. M. 1921; amd. Sec. 2, Ch. 127, L. 1975; amd. Sec. 2, Ch. 106, L. 1977.

Amendments

The 1975 amendment deleted "license tax of one dollar shall be paid by each person within thirty days after the end of the quarter ending March 31st in each year, and such additional" after "The said" at the beginning of the section; reduced the license tax per ton from twenty cents to five cents; substituted "state department of revenue" for "state treasurer"; and made minor changes in style.

The 1977 amendment substituted "22 cents per ton" for "four cents ($.04) per barrel"; deleted "beginning with the quarter ending March 31, 1921" after "in each year" near the middle of the section; and made minor changes in phraseology, punctuation and style.

84-1105. (2371) **Record of cement received.** Each and every person engaging in or carrying on such occupation in this state shall keep a record showing all cement, cement plaster, gypsum plaster and other byproducts of cement purchased or received by or delievered to such person for sale by such persons at retail in this state for the manufacturing or production of which cement, cement plaster, gypsum plaster or other byproducts of cement, no person has paid, or assumed liability for the payment of any license tax to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of barrels or tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its members, agents or employees.

History: En. Sec. 5, Ch. 16, Ex. L. 1921; re-en. Sec. 2371, R. C. M. 1921; amd. Sec. 34, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

84-1106. (2372) **Quarterly statement of products sold on which no tax paid—payment of tax.** Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, prepare a statement, on forms prescribed by the state department of revenue, showing the total number of barrels or tons of such commodities sold by such persons during such quarter for the manufacturing or production of which no person has paid, or assumed liability for the payment of, any license tax to the state of

Montana under any laws of this state, together with the total amount due to the state of Montana as license taxes from such person for such quarter; and must within thirty days, and at the same time such statement is delivered to the state department of revenue, pay to the state department of revenue the amount of the license tax shown by such statement to be due to the state of Montana for the quarter for which said statement is made. The state department of revenue may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: En. Sec. 6, Ch. 16, Ex. L. 1921; re-en. Sec. 2372, R. C. M. 1921; amd. Sec. 35, Ch. 516, L. 1973; amd. Sec. 3, Ch. 127, L. 1975.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the first sentence and at the end of the former last sentence.

The 1975 amendment substituted "after the end of each following quarter, prepare a statement" near the beginning of the section for "after the end of the following quarter, make out in duplicate"; deleted "and deliver to the state treasurer a statement" after "prescribed by the state department of revenue"; substituted "state department of revenue" for "state treasurer" in two places; deleted the former last two sentences in the section (see parent volume and 1973 amendment for prior text); and added the last sentence.

84-1108. (2374) **Procedure to ascertain tax on failure to file statement—penalty—tax lien.** If any person shall fail, neglect or refuse to make or file the statement required by section 84-1106 within the time required, the state department of revenue shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement, and shall fix and determine the amount of the license taxes due from such person for such quarter. The state department of revenue shall add to the amount of all such delinquent license taxes a penalty of ten per cent (10%) of the amount of such license taxes plus interest at the rate of one per cent (1%) per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment. The state department of revenue shall mail to the person required to file a quarterly statement and pay any license tax, a letter setting forth the amount of license tax, penalty and interest due and the letter shall further contain a statement that if payment is not made within such time a lien may be filed as set forth in section 84-1108.1. Upon receipt of said letter the person shall remit to the department of revenue the full amount of license tax, penalty and interest due within fifteen (15) days. The ten per cent (10%) penalty herein provided may be waived by the state department of revenue if reasonable cause for the failure and neglect to file the statement required by section 84-1106 is provided to the said department.

History: En. Sec. 8, Ch. 16, Ex. L. 1921; re-en. Sec. 2374, R. C. M. 1921; amd. Sec. 36, Ch. 516, L. 1973; amd. Sec. 4, Ch. 127, L. 1975.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning and end of the first sentence.

The 1975 amendment rewrote the last half of this section, beginning with "state department shall add to the amount." For prior version, see parent volume and 1973 amendment note.

84-1108.1. Procedure for collection of tax. All tax, penalty, and interest due from any person under this act shall be a lien upon any and all real property of such person upon the filing of the state department of revenue of the duplicate of the statement so made by the state department of revenue, or a certified copy of any statement filed by said department in the office of the county clerk in the county where such real property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed and recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

History: En. 84-1108.1 by Sec. 5, Ch. 127, L. 1975.

Repealing Clause

Section 6 of Ch. 127, Laws 1975 read "Sections 84-1109 and 84-1111, R. C. M. 1947, are repealed."

84-1109. (2375) **Repealed.**

Repeal

Section 84-1109 (Sec. 9, Ch. 16, Ex. L. 1921), relating to expiration of licenses for selling cement was repealed by Sec. 6, Ch. 127, Laws of 1975.

84-1111. (2377) **Repealed.**

Repeal

Section 84-1111 (Sec. 11, Ch. 16, Ex. L. 1921), relating to issuance and term of license for selling cement, was repealed by Sec. 6, Ch. 127, Laws of 1975.

CHAPTER 12—LICENSE TAXES—CEMENT AND GYPSUM PRODUCERS

Section
84-1202. License tax on producers and importers of gypsum and cement.
84-1204. Quarterly payment of tax.
84-1205. Statements to be filed with department of revenue.
84-1206. Manufacturers to keep records.
84-1207. Quarterly statement and payment of tax.
84-1209. Procedure to ascertain tax on failure of statement—penalty.
84-1213. Procedure for collection of tax.

84-1201. (2356) **Repealed.**

Repeal

Section 84-1201 (Sec. 1, Ch. 15, Ex. L. 1921), relating to the definition of person, was repealed by Sec. 24, Ch. 52, Laws 1977.

84-1202. (2357) **License tax on producers and importers of gypsum and cement.** (1) Every person engaged in or carrying on the business in the state of Montana of producing or manufacturing cement, gypsum, gypsum plaster, stucco, wallboard, land plaster, or other products of cement or gypsum and any person who imports into this state any such products for sale or use must pay to the department of revenue for the use of the state of Montana a license tax for engaging in and carrying on such business in the state of Montana in an amount equal to the following sums:

(a) for each ton of cement produced or manufactured by such person or used by such person in the manufacture or production of any of the articles or products hereinabove enumerated or imported by such person into this state for sale or use, 22 cents;

(b) for each ton of gypsum produced or manufactured by such person or used by such person in the manufacture or production of any of the articles or products hereinabove named or imported by such person into this state for such sale or use, 5 cents.

(2) The words "products of cement or gypsum" as used in this section shall, in addition to the articles herein specifically enumerated, include all manufactured products into which gypsum enters as a component part to the extent of not less than 50% by weight. No double taxation of either cement, gypsum, or the products thereof is imposed by this act.

History: En. Sec. 2, Ch. 15, Ex. L. 1921; re-en. Sec. 2357, R. C. M. 1921; amd. Sec. 1, Ch. 127, L. 1925; amd. Sec. 1, Ch. 166, L. 1931; amd. Sec. 1, Ch. 192, L. 1945; amd. Sec. 37, Ch. 516, L. 1973; amd. Sec. 1, Ch. 108, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the preliminary clause.

The 1977 amendment inserted the subsection (1) designation; deleted "for the year 1945 and each year thereafter, when engaged in or carrying on such business in this state" before "pay to the department of revenue" in the first sentence of subsection (1); redesignated subdivisions 1 and 2 as subdivisions (1)(a) and (1)(b); substituted "for each ton of cement" for "For each and every barrel of cement containing 376 pounds" at the beginning of subdivision (1)(a); increased the levy at the end of subdivision (1)(a) from 4 to 22 cents; redesignated former subdivision 3 as subsection (2); and made minor changes in phraseology, punctuation and style.

Cross-References

Multistate tax compact, sec. 84-6701.

84-1204. (2358) **Quarterly payment of tax.** Such annual license tax, as imposed by section 84-1202, shall be paid in quarterly installments for the quarters ending, respectively, March 31st, June 30th, September 30th and December 31st, of each year, beginning with the quarter ending March 31, 1945, and the amount of such license tax due for each such quarter shall be paid to the state department of revenue within thirty days after the end of each such quarter.

History: En. Sec. 3, Ch. 15, Ex. L. 1921; re-en. Sec. 2358, R. C. M. 1921; amd. Sec. 3, Ch. 192, L. 1945; amd. Sec. 38, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1205. (2359) **Statements to be filed with department of revenue.** Each and every person engaged in or carrying on the business specified in section 84-1202 at the date when this act becomes effective, must, not later than the thirtieth day of April, 1945 and every person who shall, after the date this act becomes effective, engage in such business, must immediately upon engaging therein, file with the state department of revenue a certificate and statement, on forms prescribed by the state department of revenue which shall contain the name under which such person is engaging in and carrying on such business within this state, giving the name of the place or places of business or location of plants or factories within this state; the name and address of the managing agent in this state; if a corporation, joint-stock company or association, or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company or corporation, under the laws of what state organized, its principal place of business and the names and addresses of its principal officers; and such other information as the state department of revenue may deem necessary.

History: En. Sec. 4, Ch. 15, Ex. L. 1921; re-en. Sec. 2359, R. C. M. 1921; amd. Sec. 4, Ch. 192, L. 1945; amd. Sec. 39, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-1206. (2360) **Manufacturers to keep records.** Every such person shall keep a record in such form as the state department of revenue may require of all cement, gypsum, gypsum plaster, stucco, wallboard, land plaster or other products of cement or gypsum manufactured or produced by such person in this state. Such records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its members, agents or employees.

History: En. Sec. 5, Ch. 15, Ex. L. 1921; re-en. Sec. 2360, R. C. M. 1921; amd. Sec. 5, Ch. 192, L. 1945; amd. Sec. 40, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning and end of the section.

84-1207. (2361) **Quarterly statement and payment of tax.** Each person must, within 30 days after the end of each quarter, make out, on forms prescribed by the department of revenue, and deliver to the department a statement showing the total number of tons of cement or gypsum produced by such person or used by him in the manufacture of the respective articles or products enumerated in 84-1202 or imported by such person into the state of Montana for sale or use during each month of such quarter and during the whole quarter and such other information as the department may require, together with the total amount due to the state as license taxes for such quarter, and must, within such 30 days and at the same time such statement is delivered to the department, pay to the department the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Any such person engaged in carrying on such business at more than one place or operating more than one factory or plant in this state may include all thereof in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: En. Sec. 6, Ch. 15, Ex. L. 1921; re-en. Sec. 2361, R. C. M. 1921; amd. Sec. 6, Ch. 192, L. 1945; amd. Sec. 41, Ch. 516, L. 1973; amd. Sec. 2, Ch. 108, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

The 1977 amendment deleted "within thirty days after the quarter ending March 31, 1945, and" after "Each person must" at the beginning of the first sentence; deleted "barrels or" before "tons of cement or gypsum" near the beginning of the first sentence; deleted a former second sentence reading "Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, or joint stock company making the same"; added the last sentence; and made minor changes in phraseology, punctuation and style.

84-1209. (2363) **Procedure to ascertain tax on failure of statement—penalty.** (1) If any such person shall fail, neglect, or refuse to file any statement required by 84-1207 within the time required or shall fail to pay the tax required by this act on or before the date such payment is due, the

department of revenue shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the amounts of the respective articles or products enumerated in 84-1202 manufactured or produced by such person within this state or imported by such person into the state during such quarter and during each month thereof and shall determine and fix the amount of the license taxes due to the state from such person for such quarter.

(2) The department shall add to the amount of all such delinquent license taxes a penalty of 10% of the amount of such license taxes plus interest at the rate of 1% a month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment.

(3) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter setting forth the amount of license tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made within 15 days a lien may be filed as set forth in 84-1213. Upon receipt of the letter the person shall remit to the department, within 15 days, the full amount of license tax, penalty, and interest due. The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 84-1207 is provided to the department.

History: En. Sec. 8, Ch. 15, Ex. L. 1921; re-en. Sec. 2363, R. C. M. 1921; amd. Sec. 8, Ch. 192, L. 1945; amd. Sec. 42, Ch. 516, L. 1973; amd. Sec. 3, Ch. 108, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

The 1977 amendment deleted "and shall make out a statement, showing the same, and shall add to the amount of such license taxes, a penalty of twenty-five per cent thereof and deliver such statement to the attorney general, who shall proceed to collect the amount of the license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent per annum from the date of the making of such statement by the state department of revenue until paid. Upon request of the state department of revenue, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to recover the same" from the end of subsection (1); added subsections (2) and (3); and made minor changes in phraseology and punctuation.

84-1213. Procedure for collection of tax. All tax, penalty, and interest due from any person under this act is a lien upon any and all real property of such person upon the filing by the department of revenue of a duplicate of the tax assessment statement in the office of the county clerk in the county where such real property is situated. The lien has precedence over any other claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

History: En. 84-1213 by Sec. 4, Ch. 108, L. 1977.

Title of Act

An act to change the rate of the cement and gypsum producer's license tax, to change penalty and interest rates, and to provide a procedure for filing liens; amending sections 84-1202, 84-1207, and 84-1209, R. C. M. 1947.

CHAPTER 13—LICENSE TAXES—COAL MINES

Section
84-1309.1. [Transferred.]
84-1312. Legislative findings and declarations of purpose.
84-1313. Definitions.
84-1314. Severance tax—rates imposed—exemptions.
84-1315. Quarterly statement and payment of tax.
84-1316. Penalty for delinquent tax.
84-1317. Annual testing of samples.
84-1318. When value of coal may be imputed—procedure.
84-1319. Disposal of severance taxes.
84-1320. Reporting gross proceeds from coal.
84-1321. Transmission of gross proceeds from coal to county assessor.
84-1322. Taxation of gross proceeds from coal.
84-1323. Lien of tax—enforcement of payment.
84-1324. Penalties for neglect or false statement.
84-1325. Royalties as percentage of value.

84-1301 to 84-1309. (2316 to 2324) Repealed.

Repeal

Sections 84-1301 to 84-1309 (Secs. 1 to 9, Ch. 155, L. 1921; Sec. 1, Ch. 74, L. 1931; Secs. 1, 2, Ch. 200, L. 1939), relating to coal mines license taxes, were repealed by Sec. 19, Ch. 525, Laws of 1975.

84-1309.1. [Transferred.]

Compiler's Notes

Section 8, Ch. 525, Laws of 1975, renumbered this section as sec. 84-1319.

84-1310, 84-1311. (2325, 2326) Repealed.

Repeal

Sections 84-1310, 84-1311 (Secs. 10, 11, Ch. 155, L. 1921), relating to the penalty for violating license taxes for coal mines and that license taxes are supplemental, were repealed by Sec. 19, Ch. 525, Laws of 1975.

84-1312. Legislative findings and declarations of purpose. (1) The legislature finds that while coal is extracted from the earth like metal minerals, there are differences between coal and metal minerals such that they should be classified in different categories for taxation purposes. The legislature finds that while coal can be utilized like petroleum products, there are differences between coal and petroleum such that they should be classified in different categories for taxation purposes. The legislature further finds that:

(a) coal is the only mineral which can supply energy while being easily found in abundance in Montana;

(b) coal is the only mineral which is so often marketed through sales contracts of many years' duration;

(c) coal, unlike most minerals, varies widely in composition and consequent value when marketed;

(d) coal in Montana is subject to regional and national demands for development which could affect the economy and environment of a larger portion of the state than any other mineral development has done;

(e) coal in Montana, when sub-bituminous and recoverable by strip mining, is in sufficient demand that at least one-third (⅓) of the price

it commands at the mine may go to the economic rents of royalties and production taxes;

(f) coal in the lignite form is in less demand and producers of lignite are able to pay lesser amounts of royalty and production tax than producers of sub-bituminous can pay;

(g) coal produced in underground mines has higher production costs and underground producers are able to pay lesser amounts of royalty and production tax than strip-mine producers can pay;

(h) coal production in Montana has been subject to an unco-ordinated array of taxes which overlap one another and yield revenue in an inconsistent and unpredictable manner.

(2) The legislature declares that the purposes of this chapter are:

(a) to allow the severance taxes on coal production to remain a constant percentage of the price of coal;

(b) to stabilize the flow of tax revenue from coal mines to local governments through the property taxation system;

(c) to simplify the structure of coal taxation in Montana, reducing tax overlap and improving the predictability of tax projections; and

(d) to accomplish the foregoing purposes by establishing categories of taxation which recognize the unique character of coal as well as the variations found within the coal industry.

History: En. 84-1312 by Sec. 1, Ch. 525, L. 1975.

Title of Act

An act revising the taxation of coal production; providing for a severance tax on coal produced at a percentage of value; deleting coal from the provisions taxing the net proceeds of mines; providing for taxation of the gross proceeds from coal as an element in the property tax system; providing for certain royalties; amending sections 84-301, 84-302, 84-1309.1, and 84-5402; and repealing sections 84-1301 through 84-1309, 84-1310, and 84-1311, R. C. M. 1947.

84-1313. Definitions. As used in this chapter the following definitions apply:

(1) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 84-1318.

(2) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

(3) "Produced" means severed from the earth.

(4) "Strip mining" or "surface mining" is defined in 50-1036.

(5) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 50-1036(20).

(6) "Ton" means 2,000 pounds.

(7) "Department" means the department of revenue.

(8) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings

and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

History: En. 84-1313 by Sec. 2, Ch. 525, L. 1975; amd. Sec. 1, Ch. 156, L. 1977.

Amendments

The 1977 amendment substituted "and as further defined in 50-1036(20)" in subdivision (5) for "and not regulated under section 50-1039"; and made minor changes in phraseology, punctuation and style.

84-1314. Severance tax—rates imposed—exemptions. A severance tax is imposed on each ton of coal produced in the state, in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	12 cents or 20% of value	5 cents or 3% of value
7,000-8,000	22 cents or 30% of value	8 cents or 4% of value
8,000-9,000	34 cents or 30% of value	10 cents or 4% of value
Over 9,000	40 cents or 30% of value	12 cents or 4% of value

The formula which yields the greater amount of tax in a particular case shall be used at each point on this schedule. "Value" means the contract sales price. A person is not liable for any severance tax upon 20,000 tons of the coal he produces in a calendar year.

History: En. 84-1314 by Sec. 3, Ch. 525, L. 1975; amd. Sec. 1, Ch. 164, L. 1977.

Amendments

The 1977 amendment changed the amount of coal exempt from tax from the first 5000 tons produced each quarter to the first 20,000 tons produced each year.

84-1315. Quarterly statement and payment of tax. Each coal mine operator shall compute the severance tax due on each quarter-year's worth of production on forms prescribed by the department. The statement shall indicate the tonnage produced, the average Btu value of the production, the contract sales price received for the production, and such other information as the department may require. The completed form in duplicate, with the tax payment, shall be delivered to the department not later than thirty (30) days following the close of the quarter. The form shall be verified by an officer of the coal mine operator. A person operating more than one coal mine in this state may include all of his mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: En. 84-1315 by Sec. 4, Ch. 525, L. 1975.

84-1316. Penalty for delinquent tax. The department shall add to the amount of all delinquent severance taxes a penalty of ten per cent (10%)

of the delinquent amount plus interest at the rate of one per cent (1%) per month or fraction thereof computed on the total amount of severance tax and penalty. Interest shall be computed from the date the severance tax was due to the date of payment. The department shall mail to the person required to file a quarterly report and pay any severance tax, a letter setting forth the amount of tax, penalty and interest due, and the letter shall further contain a statement that if payment is not made within fifteen (15) days a lien may be filed as set forth in section 84-1323. The penalty amount may be waived by the department if reasonable cause for the failure or neglect to file the quarterly statement is provided to the department.

History: En. 84-1316 by Sec. 5, Ch. 525, L. 1975.

84-1317. Annual testing of samples. The Montana state bureau of mines and geology shall test coal production subject to this chapter and may make rules governing the collection of test data. A person subject to this chapter shall submit to the bureau on or before August 1 each year a sample of mine run "as is" coal from each mine producing that year. Additional samples shall be submitted at the request of the bureau. The bureau shall compute the Btu per pound of each sample received and forward this information to the department prior to September 1 each year.

History: En. 84-1317 by Sec. 6, Ch. 525, L. 1975.

84-1318. When value of coal may be imputed—procedure. In a case where

(a) the operator of a coal mine is using the produced coal in an energy conversion or other manufacturing process, or

(b) a person sells coal under a contract which is not an arm's-length agreement, or

(c) a person neglects or refuses to file a statement and tax return under this chapter, the department may impute a value to the coal which approximates market value f.o.b. mine. When imputing value, the department may apply the factors used by the federal government under 26 U.S.C. section 613, or that provision as it may be labeled or amended, in determining gross income from mining, or the department may apply any other or additional criteria it considers appropriate. Each subject taxpayer shall, upon request by the department, furnish a copy of its federal income tax return, with any amendments, filed for the year in which the value of coal is being imputed and copies of the contracts under which it is selling coal at the time. When the department's estimate of market value is contested in any proceeding, the burden of proof is on the contesting party.

History: En. 84-1318 by Sec. 7, Ch. 525, L. 1975.

84-1319. Disposal of severance taxes. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 25% of total collections a year. After December 31, 1979, 50% of coal severance tax collections are allocated to this trust fund. The trust fund moneys shall be deposited in the fund established under 79-309(5) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) to the county in which coal is mined, 2% of the severance tax paid on the coal mined in that county until January 1, 1980, for such purposes as the governing body of the county may determine;

(b) 2½% until December 31, 1979, and thereafter 5% to the earmarked revenue fund to the credit of the alternative energy research development and demonstration account;

(c) 26½% until July 1, 1979, and thereafter 37½% to the earmarked revenue fund to the credit of the local impact and education trust fund account;

(d) for each of the 2 fiscal years following June 30, 1977, 13% to the earmarked revenue fund to the credit of the coal area highway improvement account;

(e) 10% to the earmarked revenue fund for state equalization aid to public schools of the state;

(f) 1% to the earmarked revenue fund to the credit of the county land planning account;

(g) 2½% to the sinking fund to the credit of the renewable resource development bond account;

(h) 2½% through June 30, 1979, one-half to the earmarked revenue fund for the purpose of acquisition, operation, or maintenance of sites and areas described in 62-304, and protection of works of art in the state capitol, and other cultural and aesthetic projects, subject to legislative appropriations, and one-half to the earmarked revenue fund, to be invested in a trust fund for the purpose of parks acquisition or management. After June 30, 1979, 5% to the trust fund for the purpose of parks acquisition or management. Income from the fund established in this subsection (h) may be appropriated for the acquisition of sites and areas described in 62-304, and the operation and maintenance of sites so acquired and protection of works of art in the state capitol and other cultural and aesthetic projects;

(i) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state.

History: En. 84-1309.1 by Sec. 2, Ch. 432, L. 1973; amd. Sec. 1, Ch. 250, L. 1974; amd. Sec. 4, Ch. 501, L. 1975; amd. Sec. 3, Ch. 502, L. 1975; amd. and redes. 84-1319 by Sec. 8, Ch. 525, L. 1975; amd. Sec. 2, Ch. 156, L. 1977; amd. Sec. 1, Ch. 540, L. 1977; amd. Sec. 2, Ch. 549, L. 1977.

Compiler's Notes

This section was amended three times in 1977 by Chs. 156, 540, and 549. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Title of Act

An act amending sections 84-1302 and 84-1303, R. C. M. 1947, to change the basis for determining and raising the strip coal mines license tax and removing the reclamation credit; providing distribution for a portion of the strip coal mines license tax to the counties; and providing for a severability clause.

Amendments

The 1974 amendment increased the allocation to the county general fund from one cent to three cents per ton.

Chapter 501, Laws of 1975, substituted "License taxes collected under the provisions of this chapter or severance taxes collected under such statutes as may be enacted in 1975 are allocated as follows" as the first sentence of the section for "License taxes collected under the provisions of this chapter are allocated as follows"; and inserted the present subdivision (2).

Chapter 502, Laws of 1975, substituted the present language of the first sentence of the section for "License taxes collected under the provisions of this chapter are allocated as follows"; substituted the present language of subdivision (1) for "To the county general fund from which coal was mined three cents (3¢) per ton"; and added the provisions of subdivisions (3) through (8). The compiler deleted a provision designated as subdivision (6) by Ch. 502 which read: "Two and one-half per cent (2½%) of total collections per year to the earmarked revenue fund, to the credit of the alternative energy research and development account."

Chapter 525, Laws of 1975, renumbered this section; made the same changes in the first sentence of the section and in subdivision (1) as Ch. 502, Laws of 1975; added the provisions of subdivision (9); and inserted "or severance" before "taxes" in former subdivision (2) which has been redesignated as subdivision (10).

Prior to the 1977 amendments this section read: "License or severance taxes collected under the provisions of this chapter or such sections as may enact a severance tax on coal in 1975 are allocated as follows:

"(1) To the county for such purposes as the governing body of that county may determine from which coal was mined for each calendar year prior to January 1, 1980, three cents (3¢) per ton or four per cent (4%) of the severance tax paid on the coal mined in that county, whichever is higher, and for each calendar year following December 31, 1979, three cents (3¢) per ton or three and one-half per cent (3½%) of the severance tax paid on the coal mined in that county, whichever is higher.

"(2) Two and one-half per cent (2½%) of total collections per year until December 31, 1979 and thereafter four per cent (4%) of total collections per year to the earmarked revenue fund, to the credit of the alternative energy research development and demonstration account.

"(3) Twenty-seven and one-half per cent (27.5%) of total collections per year, until July 1, 1979, and thereafter thirty-five per cent (35%), to the earmarked revenue fund to the credit of the local impact and education trust fund account.

"(4) For each of the four (4) fiscal years following the effective date of this act ten per cent (10%) of total collections per year to the earmarked revenue fund to the credit of the coal area highway improvement account.

"(5) Ten per cent (10%) of total collections per year, to the earmarked revenue fund, for state equalization aid to public schools of the state.

"(6) For the period ending December 31, 1979, one per cent (1%) of total collections per year to the earmarked revenue fund, to the credit of the county land planning account.

"(7) Two and one-half per cent (2½%) of total collections per year, to the sinking fund, to the credit of the renewable resource development bond account.

"(8) Two and one-half per cent (2½%) of total collections per year through June 30, 1979, of which portion one-half (½) shall be allocated to the earmarked revenue fund, for the purpose of acquisition of sites and areas described in section 62-304, subject to legislative appropriations, and one-half (½) shall be allocated to the trust and legacy fund, for the purpose of parks acquisition. After June 30, 1979, five per cent (5%) of total collections per year shall be allocated to the trust and legacy fund, for the purpose of parks acquisition. Income from the fund established in this subsection may be appropriated for the acquisition of sites and areas described in section 62-304.

"(9) To the earmarked revenue fund, such portions of the severance tax as may be authorized by laws enacted in 1975.

"(10) All other revenues from license or severance taxes collected under the provisions of this chapter shall be deposited to the credit of the general fund of the state."

Effective Date

Section 2 of Ch. 250, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

84-1320. Reporting gross proceeds from coal. Each person engaged in mining coal must, on or before March 31 each year, file with the department of revenue a statement of the gross yield from each coal mine owned

or worked by such person in the preceding calendar year and the value thereof. The statement shall be in the form prescribed by the department, which may be coordinated with the form used under 84-1315, and must be verified by an officer of the firm. The statement shall include:

(1) the name and address of the owner or lessee or operator of the mine;

(2) the location of the mine;

(3) the tons of coal extracted, treated, and sold from the mine during the taxable period;

(4) the gross yield or value in dollars and cents derived from the contract sales price.

History: En. 84-1320 by Sec. 9, Ch. 525, L. 1975; amd. Sec. 3, Ch. 156, L. 1977.

Amendments

The 1977 amendment substituted the reference to 84-1315 in the second sentence for a reference to 84-1316; and made minor changes in phraseology, punctuation and style.

84-1321. Transmission of gross proceeds from coal to county assessor. On or before July 1 each year the department shall transmit to the county assessor of each county in which coal mines are situated, the valuation of the gross proceeds of such mines for the purpose of taxation, as the same have been determined by the department. The county assessor shall immediately enter the same upon a suitable assessment roll, the form of which shall be prescribed by the department.

History: En. 84-1321 by Sec. 10, Ch. 525, L. 1975.

84-1322. Taxation of gross proceeds from coal. The county assessor shall prepare from the reported gross proceeds from coal a tax roll, which he shall transmit to the county treasurer on or before September 15 each year. The county treasurer shall proceed to give full notice thereof to each coal producer and to collect the taxes due within sixty (60) days after mailing.

History: En. 84-1322 by Sec. 11, Ch. 525, L. 1975.

84-1323. Lien of tax—enforcement of payment. The tax on gross proceeds from coal shall be levied as taxes on other forms of property, and this tax and the severance tax on coal production are each a lien upon the coal mine and a prior lien upon all personal property and improvements used to produce the coal. These taxes may be collected by the seizure and sale of the personal property on which the tax is a lien, as provided under sections 84-4202 through 84-4211, or by suit under sections 84-4301 through 84-4302.

History: En. 84-1323 by Sec. 12, Ch. 525, L. 1975.

84-1324. Penalties for neglect or false statement. A person who fails, neglects, or refuses to file any statement required under this chapter, or who makes a false statement commits a misdemeanor. A person convicted

under this section shall be fined not to exceed one thousand dollars ($1,000) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 84-1324 by Sec. 13, Ch. 525, L. 1975.

84-1325. Royalties as percentage of value. (1) If the board of land commissioners leases any state lands for coal mining after the effective date of this act with the royalty to the state of Montana stated as a percentage of the value of the coal, the contract shall define value as the contract sales price as defined in section 84-1313.

(2) In any civil action involving a royalty to any person owning coal in this state, in which the royalty is stated as a percentage of the value of the coal, such "value" shall be construed by the court to be the contract sales price as defined in section 84-1313, unless the terms of the contract plainly indicate a different definition of value.

History: En. 84-1325 by Sec. 18, Ch. 525, L. 1975.

Repealing Clause

Section 19 of Ch. 525, Laws 1975 read "Sections 84-1301 through 84-1309, 84-1310, and 84-1311, R. C. M. 1947, are repealed."

CHAPTER 14—LICENSE TAXES—COAL RETAILERS

Section
84-1402. License taxes to retail coal—fees.
84-1403. Retailers to file statements—contents.
84-1404. Payment of license taxes.
84-1405. Record of coal sold for retail.
84-1406. Statement of coal sold—form and filing.
84-1408. Procedure to determine tax on failure to file statement—penalty.
84-1408.1. Procedure for collection of tax.
84-1417. License taxes supplemental.

84-1402. (2328) **License taxes to retail coal—fees.** Every person who engages in or carries on the occupation or business in this state of retailing, or selling at retail, coal of any kind must, for the year 1921, and each year thereafter when engaged in such occupation or business, pay to the state department of revenue a license tax, for engaging in and carrying on such business, in an amount equal to five cents a ton for each and every ton of coal containing two thousand pounds sold by such person during such year and for the mining of which coal no "mine operator" has paid, or assumed liability for the payment of, any license taxes to the state of Montana under any law of this state.

History: En. Sec. 2, Ch. 3, Ex. L. 1921; re-en. Sec. 2328, R. C. M. 1921; amd. Sec. 1, Ch. 125, L. 1975.

Amendments

The 1975 amendment substituted "pay to the state department of revenue a license tax, for engaging in and carrying on such business, in an amount" near the middle of the section for "procure from the state treasurer a license to engage in and carry on such occupations or business in this state, and shall annually pay to the state treasurer for such license a fee of one dollar, together with an additional sum or amount"; substituted "any license taxes" for "any license fee" near the end of the section; and made minor changes in phraseology.

Cross-References

Multistate tax compact, sec. 84-6701.

84-1403. (2329) **Retailers to file statements—contents.** Each and every person engaged in or carrying on such occupation or business in the state of Montana at the date when this act becomes effective must, not later than the 30th day of April, 1921, and every person who shall engage in or carry on such occupation or business after the date when this act becomes effective must immediately after engaging in such occupation or business, make out and file with the state department of revenue a certificate and statement, on forms prescribed by the state department of revenue, which shall contain the name under which such person is engaging in and carrying on such occupation and business in this state, giving the location of each place of business of such person, the name and address of the managing agent in this state, if an association, joint-stock company, syndicate, or corporation; or, if a firm or copartnership the names and addresses of the persons composing the same; if an association, joint-stock company, syndicate, or corporation, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers, and such other information as the state department of revenue may require.

History: En. Sec. 3, Ch. 3, Ex. L. 1921; re-en. Sec. 2329, R. C. M. 1921; amd. Sec. 48, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" twice near the middle of the section and near the end of the section.

84-1404. (2330) **Payment of license taxes.** The said license taxes of five cents per ton shall be paid in quarterly installments for the quarters ending March 31st, June 30th, September 30th and December 31st in each year, beginning with the quarter ending March 31, 1921, and the total amount of such license taxes becoming due for any quarter shall be paid to the state department of revenue within thirty days after the end of the quarter for which the same is due.

History: En. Sec. 4, Ch. 3, Ex. L. 1921; re-en. Sec. 2330, R. C. M. 1921; amd. Sec. 2, Ch. 125, L. 1975.

Amendments

The 1975 amendment substituted references to license taxes for references to license fees throughout the section; deleted "of one dollar shall be paid by each person within thirty days after the end of the quarter ending March 31st in each year, and such additional license fee" after "taxes" at the beginning of the section; and substituted "state department of revenue" for "state treasurer" near the end of the section.

84-1405. (2331) **Record of coal sold for retail.** Each and every person engaging in or carrying on such occupation or business in this state shall keep a record showing all coal purchased or received by or delivered to such person for sale by such person at retail in this state for the mining of which coal no "mine operator" has paid, or assumed liability for the payment of, any license tax to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its director, agents, or employees.

History: En. Sec. 5, Ch. 3, Ex. L. 1921; re-en. Sec. 2331, R. C. M. 1921; amd. Sec. 49, Ch. 516, L. 1973; amd. Sec. 3, Ch. 125, L. 1975.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

The 1975 amendment substituted "license tax" for "license fee" in the middle of the section; and substituted "director" for "members" at the end of the section.

84-1406. (2332) **Statement of coal sold—form and filing.** Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, prepare a statement, on forms prescribed by the state department of revenue, showing the total number of tons of coal sold by such person during such quarter for the mining of which no "mine operator" has paid, or assumed liability for the payment of, any license tax to the state of Montana under any law of this state, together with the total amount due to the state of Montana as license taxes from such person for such quarter; and must within such thirty days, and at the same time such statement is delivered to the state department of revenue, pay to the state department of revenue the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which said statement is made. The state department of revenue may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: En. Sec. 6, Ch. 3, Ex. L. 1921; re-en. Sec. 2332, R. C. M. 1921; amd. Sec. 50, Ch. 516, L. 1973; amd. Sec. 4, Ch. 125, L. 1975.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle of the first sentence and at the end of the former last sentence.

The 1975 amendment substituted "prepare a statement" for "make out in duplicate" near the beginning of the section; deleted "and deliver to the state treasurer, a statement" before "showing the total"; substituted "taxes" or "tax" for "fee" or "fees" throughout the section; substituted "department of revenue" for "treasurer" in two places near the end of the first sentence and substituted the last sentence for two sentences reading "Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, joint-stock company, syndicate, or corporation making the same. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state department of revenue."

84-1408. (2334) **Procedure to determine tax on failure to file statement—penalty.** If any person shall fail, neglect, or refuse to make or file the statement required by section 84-1406, or shall fail to make payment of such license tax within the time therein required, the state department of revenue shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement and shall fix and determine the amount of the license taxes due from such person for such quarter. The state department of revenue shall add to the amount of all such delinquent license taxes a penalty of ten per cent (10%) of the amount of such license taxes plus interest at the rate of one per cent (1%) per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment. The state department of revenue shall mail to the person required

to file a quarterly statement and pay any license tax, a letter setting forth the amount of license tax, penalty and interest due and the letter shall further contain a statement that if payment is not made within such time a lien may be filed as set forth in section 84-1408.1. Upon receipt of said letter the person shall remit to the department of revenue the full amount of license tax, penalty and interest due within fifteen (15) days. The ten per cent (10%) penalty herein provided may be waived by the state department of revenue if reasonable cause for the failure and neglect to file the statement required by section 84-1406 is provided to the said department.

History: En. Sec. 8, Ch. 3, Ex. L. 1921; re-en. Sec. 2334, R. C. M. 1921; amd. Sec. 2, Ch. 74, L. 1931; amd. Sec. 51, Ch. 516, L. 1973; amd. Sec. 5, Ch. 125, L. 1975.

Amendments

The 1973 amendment substituted "department of revenue" for "state board of equalization" near the beginning and end of the first sentence.

The 1975 amendment substituted "**license taxes" for "license fees" in the first** sentence after "fix and determine the amount of the"; and rewrote the last half of the section, after "taxes due from such person for such quarter." For prior text, see parent volume and 1973 amendment note.

84-1408.1. Procedure for collection of tax. All tax, penalty, and interest due from any person under this act shall be a lien upon any and all real property of such person upon the filing of the state department of revenue of the duplicate of the statement so made by the state department of revenue, or a certified copy of any statement filed by said department in the office of the county clerk in the county where such real property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed and recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

History: En. 84-1408.1 by Sec. 6, Ch. 125, L. 1975.

Title of Act

An act to amend sections 84-1402, 84-1404, 84-1405, 84-1406, 84-1408, and 84-1417 pertaining to the coal retailers' license tax; to repeal sections 84-1409, 84-1412 and 84-1414.

84-1409. (2335) **Repealed.**

Repeal

Section 84-1409 (Sec. 9, Ch. 3, Ex. L. 1921), relating to expiration of licenses for coal retailers, was repealed by Sec. 8, Ch. 125, Laws of 1975.

84-1412. (2338) **Repealed.**

Repeal

Section 84-1412 (Sec. 12, Ch. 3, Ex. L. 1921; Sec. 52, Ch. 516, L. 1973), relating to revocation of licenses of coal retailers, was repealed by Sec. 8, Ch. 125, Laws of 1975.

84-1414. (2340) **Repealed.**

Repeal

Section 84-1414 (Sec. 14, Ch. 3, Ex. L. 1921), relating to state treasurer issuing license to coal retailers, was repealed by Sec. 8, Ch. 125, Laws of 1975.

84-1417. (2343) **License taxes supplemental.** The license tax herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 17, Ch. 3, Ex. L. 1921; re-en. Sec. 2343, R. C. M. 1921; amd. Sec. 7, Ch. 125, L. 1975.

Amendments

The 1975 amendment substituted "license tax" for "license fees."

Repealing Clause

Section 8 of Ch. 125, Laws 1975 read "Sections 84-1409, 84-1412 and 84-1414, R. C. M. 1947, are repealed."

CHAPTER 15—LICENSE TAXES—CORPORATION LICENSE TAX

Section
84-1501. Corporation license tax—organizations exempt therefrom—alternative tax based on gross sales.
84-1501.1. Definitions.
84-1501.2. Election by small business corporation.
84-1501.5. Minimum fee of corporations qualifying under section 84-1501.2 unaffected.
84-1501.6. State and national banks subject to tax.
84-1501.7. Effective dates.
84-1502. Deductions allowed in computing income.
84-1503. Segregation of income within and without state.
84-1504. Computation of license tax—return of net income to be filed—definitions.
84-1505. Assessment and collection of tax.
84-1505.1. Release of tax liens.
84-1505.2. Immediate payment of tax or deficiency due may be required if delay would jeopardize collection.
84-1507. Returns and corrections to be public records.
84-1508. Regulations—attendance of witnesses—arbitrary assignment of net income.
84-1508.1. Determination of tax liability—interest on deficiencies and overpayments.
84-1508.2. Periods of limitation—limitations for notification of additional tax extended if taxpayer fails to report change in federal tax—waiver.
84-1509. Consolidated returns—computation and procedure on.
84-1512. Where omission deemed committed—certificate of department as evidence.
84-1514. Delinquency—suspension—forfeiture—dissolution.
84-1515. Reviver of corporation after suspension or forfeiture.
84-1516. Penalty for violation of act.
84-1517. Failure to make return—estimate and investigation of net income—copy of federal return to be furnished on request—report of change in federal tax—copy of amended federal returns.
84-1518. Reciprocity with federal and other states' revenue officers regarding returns.
84-1519. Short title.
84-1520. Definitions.
84-1523. Tax credit—determination—limitation.
84-1524. Department duties.
84-1525. Exclusion.
84-1526. Closing agreements.

84-1501. (2296) **Corporation license tax—organizations exempt therefrom—alternative tax based on gross sales.** The term corporation includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity, and all other corporations whether created, organized or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States. Every corporation, except as hereinafter provided and except as provided in section 40-2821 (5), R. C. M. 1947, engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state such percentage or percentages of its total net income for the preceding taxable year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under section 84-1503. This

tax is due and payable on the 15th day of the fifth month following the close of the taxable year of the corporation; however, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

The percentage of net income to be paid under this section shall be six and three-quarters per cent (6¾%) of all net income for the taxable period. The rate set forth in this act shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971. Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than fifty dollars ($50).

Pursuant to the provisions of article III, section 2, of the Multistate Tax Compact (Title 84, chapter 67, R. C. M. 1947) every corporation deriving income from sources both within and without the state of Montana and required to file a return and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed one hundred thousand dollars ($100,000), may elect to pay a tax of one-half of one per cent (0.5%) of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of article IV, sections 16 and 17, of the Multistate Tax Compact.

There shall not be taxed under this title any income received by any:

(a) Labor, agricultural or horticultural organization;

(b) Fraternal beneficiary, society, order or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

(c) Cemetery company owned and operated exclusively for the benefit of its members;

(d) Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) Business league, chamber of commerce, or board of trade, not organized for profit, and no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) Civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare;

(g) Club organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h) Farmers' or other mutual hail, cyclone or fire insurance company, mutual ditch or irrigation company, mutual or co-operative telephone company, or like organization of a purely local character, the income of which

consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

(i) Any co-operative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a co-operative basis;

(j) Corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(k) In determining the license fee to be paid under this act, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state, or from the exercise of any governmental function.

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16 amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1933; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973; amd. Sec. 1, Ch. 5, L. 1974; amd. Sec. 1, Ch. 257, L. 1977.

Amendments

The 1967 amendment, in the first paragraph, inserted "and except as provided in section 40-2821 (5), R. C. M. 1947" the first place it appears in the second sentence; and, in the second paragraph, increased the percentage of net income to be paid under this section from 5¼% to 5½%, and inserted the second sentence.

The 1969 amendment, in the first sentence of the second paragraph, raised the percentage of net income from "five and one-half per cent (5½%)" to "six and one-quarter per cent (6¼%)"; in the second sentence deleted "all" before "taxable years" and substituted "1969" for "1967"; inserted a third sentence reading: "For taxable years ending on or after February 28, 1971, the percentage of net income to be paid under this act shall be five and one-half per cent (5½%) of all net income for the taxable period."; and raised the minimum tax stated in the fourth sentence from "$10" to "$50."

Chapter 16, Laws of 1971, inserted "and except as provided in section 40-2821(5), R. C. M. 1947" the second place it appears in the second sentence of the first paragraph; and inserted the present third paragraph providing for an alternative corporation license tax.

Chapter 333, Laws of 1971, deleted "ending on or" after "taxable years" in the second sentence of the second paragraph; and deleted the former third sentence inserted in the second paragraph by the 1969 amendment.

Extraordinary Session Chapter 5, Laws of 1971, substituted "all taxable years ending on or after" for "taxable years after" in the second sentence of the second paragraph.

The Second Extraordinary Session, Chapter 7, Laws of 1971, increased the rate specified in the second paragraph from 6¼% to 6¾%; and omitted the third paragraph, which had been inserted by Ch. 16, Laws of 1971.

Chapter 468, Laws of 1973, reinserted the third paragraph, which had been inserted by Chapter 16, Laws of 1971, but omitted by the amendment in the 1971 2nd Extraordinary Session.

Chapter 484, Laws of 1973, inserted the third sentence in the second paragraph.

The 1974 amendment rewrote the first paragraph which read: "The term corporation includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity whether created under and pursuant to state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided and except as provided in section 40-2821 (5), R. C. M. 1947, organized and existing under the laws of the state of Montana and engaged in business therein, shall annually pay to the state treasurer, as a license fee for carrying on business in said state of Montana, such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth; and every corporation, except as hereinafter provided, and except as provided in section 40-2821 (5), R. C. M. 1947, organized and existing under the laws of any other state or coun-

try, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of such percentage or such percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth"; and made a minor change in phraseology in subdivision (b).

The 1977 amendment inserted "taxable" near the end of the second sentence of the first paragraph; added the last sentence in the first paragraph; and made minor changes in punctuation and style.

Effective Dates

Section 2 of Ch. 318, Laws 1967 read: "The rate set forth in this act shall be effective as to all taxable years ending on or after February 28, 1967, whether on the calendar or fiscal year basis."

Section 3 of Ch. 318, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 20, 1967.

Section 2 of Ch. 16, Laws 1971 read "This act shall be effective for taxable years beginning on and after January 1, 1971."

Section 2 of Ch. 333, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Section 2 of Ch. 5, Ex. Laws 1971, provides: "The rate set forth in this act shall be effective as to all taxable years ending on or after February 28, 1971, whether on the calendar or fiscal year basis."

Section 3 of Ch. 5, Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved April 6, 1971.

Repealing Clause

Section 2 of Ch. 484, Laws 1973 read "Section 84-1501.8, R. C. M. 1947, is repealed."

Cross-References

Corporation income tax, sec. 84-6901 et seq.

Multistate tax compact, sec. 84-6701.

Sale of Assets in Liquidation

Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate license tax paid upon the gain realized by the corporation in the sale of its assets in liquidation. Barth v. Montana State Board of Equalization, 148 M 259, 419 P 2d 484, 485.

84-1501.1. Definitions. (a) Small business corporation. For purposes of this act, the term "small business corporation" means a corporation doing business in Montana, and which does not—

(1) have more than ten (10) shareholders;

(2) have as a shareholder a person (other than an estate and other than a trust described in subsection (e) who is not an individual;

(3) and (4) * * * [Same as parent volume.]

(b) * * * [Same as parent volume.]

(c) Stock owned by husband and wife. For purposes of subsection (a)(1), stock shall be treated as owned by one shareholder when it:

(1) is community property of a husband and wife (or the income from which is community income) under the applicable community property law of a state;

(2) is held by a husband and wife as joint tenants, tenants by the entirety, or tenants in common;

(3) was, on the date of death of a spouse, stock described in subsection (c)(1) or (c)(2) and is, by reason of such death, held by the estate of the deceased spouse and the surviving spouse or by the estates of both spouses (by reason of their deaths on the same date), in the same proportion as held by the spouses before such death; or

(4) was, on the date of the death of a surviving spouse, stock described in subsection (c)(3) and is, by reason of such death, held by the estates

of both spouses in the same proportion as held by the spouses before their deaths.

(d) Special shareholder rules.

(1) A small business corporation which has been an electing small business corporation for a period of 5 consecutive taxable years may not have more than 15 shareholders.

(2) If, during the 5-year period set forth in subsection (d)(1), the number of shareholders of an electing small business corporation would increase to an amount in excess of 10 (but not in excess of 15) solely by reason of additional shareholders who acquired their stock through inheritance, the corporation may have a number of additional shareholders equal to the number by which the inheriting shareholders cause the total number of shareholders of such corporation to exceed 10.

(e) Certain trusts permitted as shareholders. For purposes of subsection (a), the following trusts may be shareholders;

(1) a trust all of which is treated as owned by the grantor under sections 671 through 678 of the internal Revenue Code;

(2) a trust created primarily to exercise the voting power of stock transferred to it;

(3) any trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 60-day period beginning on the day on which such stock is transferred to it. In the case of a trust described in subsection (e)(2), each beneficiary of the trust shall, for purposes of subsection (a)(1), be treated as a shareholder.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959; amd. Sec. 1, Ch. 405, L. 1977.

Amendments

The 1977 amendment inserted "and other than a trust described in subsection (e)" in subdivision (a)(2); and added subsections (c) through (e).

References

Barth v. Montana State Board of Equalization, 148 M 259, 419 P 2d 484, 485.

84-1501.2. Election by small business corporation. (1) Except as provided in subsection (6), any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if consented to by all persons who are shareholders in such corporation, the election is effective:

(a) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day; or

(b) on the day on which the election is made, if the election is made after such first day.

(2) If a small business corporation makes an election under subsection (1), then:

(a) with respect to the taxable years of the corporation for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such corporation, and

(b) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this act shall apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such shareholder.

(3) An election under subsection (1) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year or at any time during the month preceding such first month. Such election shall be made in such manner as the state department of revenue shall prescribe by regulations.

(4) An election under subsection (1) shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, unless it is terminated, with respect to any such taxable year under subsection (5).

(5) (a) (i) An election under subsection (1) made by a small business corporation shall terminate if any person who was not a shareholder in such corporation at the time of the initial election under subsection (1) subsequently becomes a shareholder in such corporation and affirmatively refuses (in such manner as the department of revenue shall by rules prescribe) to consent to such election on or before the 60th day on which he acquires the stock.

(ii) If the person acquiring the stock is the estate of a decedent, the period under subsection (5)(a)(i) for affirmatively refusing to consent to the election shall expire on the 60th day after whichever of the following is the earlier:

(A) the day on which the executor or administrator of the estate qualifies; or

(B) the last day of the taxable year of the corporation in which the decedent died.

(iii) Any termination of an election under subsection (5)(a)(i) by reason of the affirmative refusal of any person to consent to such election shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.

(b) An election under subsection (1) made by a small business corporation may be revoked by it for any taxable year after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph shall be effective:

(i) for the taxable year in which made, if made before the close of the first month of such taxable year;

(ii) for the taxable year following the taxable year in which made, if made after the close of such first month, and for all succeeding taxable years of the corporation. Such revocation shall be made in such manner as the department of revenue shall prescribe by regulations.

(c) An election under subsection (1) made by a small business corporation shall terminate if the corporation ceases to meet the definition of a small business corporation at any time after election is effective under subsection (1).

(d) Such termination shall be effective for the taxable year of the corporation in which the corporation ceases to be a small business corporation and for all succeeding taxable years of the corporation.

(6) If a small business corporation has made an election under subsection (1) and if such election has been terminated or revoked under subsection (5), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (1) for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such termination or revocation is effective, unless the department of revenue consents to such election.

(7) This election shall not be effective unless the corporate net income or loss of such electing corporation shall have been included in the stockholders' adjusted gross income as such is defined in 84-4905.

(8) Every electing corporation shall be required to pay the minimum fee of $10 required by 84-1501.

History: En. Sec. 2, Ch. 122, L. 1959; amd. Sec. 53, Ch. 516, L. 1973; amd. Sec. 1, Ch. 34, L. 1977; amd. Sec. 2, Ch. 405, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 34 and once by Ch. 405. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in subdivision (c)(1), in the final paragraph of subdivision (e)(1), in subdivision (e)(2)(B) and in subsection (f); and made a minor change in style.

Chapter 34, Laws of 1977, substituted numbers for letters as subsection designations and letters for numbers as subdivision designations; deleted subsection captions throughout the section; added "the election is effective" at the end of the introductory paragraph of subsection (1); deleted former subsection (c)(2) concerning prior years; deleted former subsection (e)(1)(A) requiring a new shareholder of an electing corporation to affirmatively elect; substituted "at the time of the initial election under subsection (1) subsequently" in the first sentence of subsection (5) for "on the day on which the election is made, if such election is made after such first day"; substituted subdivisions (5)(c) and (5)(d) for subdivision (e)(3) as it appears in the parent volume; and made minor changes in phraseology, punctuation and style. For prior version of deleted provisions, see parent volume.

Chapter 405, Laws of 1977, substituted "affirmatively refuses (in such manner as the department of revenue shall by rules prescribe) to consent to such election on or before the 60th day on which he acquires the stock" at the end of subdivision (5)(a)(i) for "does not consent to such election within such time as the state department of revenue shall prescribe by regulations. Such termination shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation"; and inserted subdivisions (5)(a)(ii) and (5)(a)(iii).

References

Barth v. Montana State Board of Equalization, 148 M 259, 419 P 2d 484, 485.

84-1501.3. Small business option unavailable on dissolution, etc.

Application

This section applies only to shifting of the tax burden under sections 84-1501.1 and 84-1501.2. Barth v. Montana State Board of Equalization, 148 M 259, 419 P 2d 484, 485.

84-1501.4. Repealed.

Repeal

Section 84-1501.4 (Sec. 1, Ch. 316, L. 1967), exempting state banks from the corporation license tax until national banks are taxable, was repealed by Sec. 2, Ch. 23, Laws 1971.

84-1501.5. Minimum fee of corporations qualifying under section 84-1501.2 unaffected. Notwithstanding the provisions of this act, corporations electing and qualifying under section 84-1501.2 shall pay a minimum fee of ten dollars ($10).

History: En. Sec. 2, Ch. 11, Ex. L. 1969.

Effective Date

Section 3 of Ch. 11, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

84-1501.6. State and national banks subject to tax. Effective with taxable years beginning on and after January 1, 1971, every bank organized under the laws of the state of Montana or of any other state and every national bank organized under the laws of the United States are subject to the Montana corporation license tax provided for under Title 84, chapter 15, R. C. M. 1947.

History: En. 84-1501.6 by Sec. 1, Ch. 23, L. 1971.

Title of Act

An act subjecting state and national banks to the Montana corporation license tax; and repealing section 84-1501.4, R. C. M. 1947; and providing effective dates.

Repealing Clause

Section 2 of Ch. 23, Laws 1971 read "Section 84-1501.4, R. C. M. 1947, is repealed."

Validity

When the department of revenue determined that, due to postponement of the effective date of the amendment to 12 U.S.C. § 548 which allowed enactment of this section, it could not be enforced with respect to national banks for tax year 1972, it was thereby invalidated with respect to such banks; and, since the section contained no saving clause, it was invalidated with respect to state banks as well. Security Bank & Trust Co. v. Connors, — M —, 550 P 2d 1313.

84-1501.7. Effective dates. For the taxable year beginning on and after January 1, 1971, section 1 [84-1501.6] of this act is effective in accordance with Public Law 91-156, section 1 (12 U.S.C. 548 (5)). For taxable years beginning on and after January 1, 1972, section 1 [84-1501.6] of this act is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548).

History: En. Sec. 3, Ch. 23, L. 1971.

84-1501.8. Repealed.

Repeal

Section 84-1501.8 (Sec. 2, Ch. 7, 2nd Ex. L. 1971), relating to effective date of the 1971 rate change, and providing a rate reduction if the 1971 referred measure was approved, was repealed by Sec. 2, Ch. 484, Laws 1973.

84-1502. (2297) **Deductions allowed in computing income.** In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

1. * * * [Same as parent volume.]

2. (A) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the internal revenue code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(B) (a) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 84-1502, over the gross income, with the modifications specified in paragraph (b) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five taxable periods following the taxable period of such loss. A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, shall be a net operating loss carryover to each of the seven taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in paragraph (b) (ii) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(b) The modifications referred to in paragraph (a) of this subsection shall be as follows:

(i) No net operating loss deduction shall be allowed.

(ii) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(c) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(d) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger.

In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(e) Notwithstanding the provisions of section 84-1508.1 (c), R. C. M., 1947, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(f) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

3. In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, such reasonable allowance to be determined according to the provisions of the internal revenue code in effect for the taxable year. All elections made under the internal revenue code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

4. * * * [Same as parent volume.]

5. Interest income from obligations of the state of Montana, or any political subdivision or municipality of the state of Montana.

6. Taxes paid within the year except the following: (a) Taxes imposed by this act.

(b) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(c) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(d) Taxes imposed by any other state or country upon or measured by net income or profits.

Taxes deductible under this act shall be construed to include taxes imposed by any county, school district or municipality of this state.

7. That portion of an energy-related investment allowed as a deduction under 84-7403.

History: En. Sec. 2, Ch. 79, L. 1917; amd. Sec. 1, Ch. 69, L. 1919; amd. Sec. 1, Ch. 258, L. 1921; re-en. Sec. 2297, R. C. M. 1921; amd. Sec. 2, Ch. 166, L. 1933; amd. Sec. 1, Ch. 133, L. 1947; amd. Sec. 1, Ch. 263, L. 1959; amd. Sec. 1, Ch. 235, L. 1971; amd. Sec. 1, Ch. 358, L. 1971; amd. Sec. 1, Ch. 320, L. 1973; amd. Sec. 54, Ch. 516, L. 1973, amd. Sec. 1, Ch. 54, L. 1974; amd. Sec. 3, Ch. 405, L. 1977; amd. Sec. 4, Ch. 576, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 405 and once by Ch. 576. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 235, Laws of 1971, inserted the present subdivision 5; and renumbered former subdivisions 5 and 6 as subdivisions 6 and 7.

Chapter 358, Laws of 1971, designated the former subdivision 2 as subdivision 2 (A); added subdivision 2 (B); substituted "or" for "of" after "net income" in subdivision 5(c); and deleted subdivision 7 relating to insurance companies.

Chapter 320, Laws of 1973 inserted "and obsolescence" in the first sentence of subdivision 2(A); substituted "used in the trade or business" for "arising out of its use or employment in the business or trade" in the first sentence of subdivision 2(A); inserted "such allowance to be de-

termined and according to the provisions of section 167 of the internal revenue code in effect with respect to the taxable year" at the end of the first sentence in subdivision 2(A); inserted the second sentence in subdivision 2(A); inserted "consolidated corporations prior to the date of" in the second paragraph of subdivision 2(B)(d); and substantially rewrote subsection 3, to adopt federal rules and to require the same election as made on the federal return.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" in subsection 3.

The 1974 amendment inserted subdivision 6(d).

Chapter 405, Laws of 1977, inserted the fifth sentence of subdivision 2(B)(a); and made minor changes in style.

Chapter 576, Laws of 1977, added subdivision 7.

Application

Section 4 of Ch. 405, Laws 1977 read "The amendments made in sections 1 and 2 [84-1501.1, 84-1501.2] apply to taxable years beginning after December 31, 1976. The amendment made in section 3 [84-1502] applies to taxable years ending after December 31, 1975."

Effective Dates

Section 2 of Ch. 235, Laws 1971 read "The provisions of this act shall apply to all taxable years commencing on or after December 31, 1970, whether on a calendar or fiscal year basis."

Section 3 of Ch. 235, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

Section 2 of Ch. 358, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Section 2 of Ch. 320, Laws 1973 read "This act is effective for taxable years ending on and after December 31, 1972."

Section 2 of Ch. 54, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved February 27, 1974.

Losses

A clear reading of the words "All losses" has the plain and obvious meaning that all losses, including bad debts, are to be deducted according to subdivision (2) in the year actually sustained and charged off. First Federal Savings & Loan Assn. v. State Tax Appeal Board, — M —, 535 P 2d 183.

Reserve for Bad Debts

Subdivision (2) provides express exception to the deduction of reserves for bad debts as allowed by the Federal Internal Revenue Code. First Federal Savings & Loan Assn. v. State Tax Appeal Board, — M —, 535 P 2d 183.

DECISIONS UNDER FORMER LAW

Operating Loss

Any net operating loss deduction previously prevented under section 84-1504, including by reference net operating losses allowable under section 172 of the Internal Revenue Code, are eliminated under the new and amended definition of net operating loss contained in this section. Lazy JD Cattle Co. v. State Board of Equalization, — M —, 504 P 2d 287.

Nothing in the 1971 amendment to this section indicates an intention on the part of the legislature to repeal the operating loss deduction under section 84-1504 retroactively. Lazy JD Cattle Co. v. State Board of Equalization, — M —, 504 P 2d 287.

84-1503. (2297.1) **Segregation of income within and without state.** (1) Any corporation having income from business activity which is taxable both within and without this state shall allocate and apportion its net income as provided in this section.

(a) A corporation engaged in a unitary business within and without Montana must apportion its business income as provided for under subsection 9 of this section. A business is unitary when the operation of the business within the state is dependent upon or contributory to the operation of the business outside the state or if the units of the business within and without the state are closely allied and not capable of separate maintenance as independent business.

(b) A corporation not engaged in a unitary business must allocate its business income by means of separate accounting methods, provided its

books and records are so kept that the income and expenses attributable to business operations within the state can be properly segregated from total income and expense. If the corporation's books and records do not permit such proper segregation, its business income must be apportioned according to the provisions of subsection 9 of this section.

(2) Definitions:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Nonbusiness income" means all income other than business income.

(c) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(d) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(e) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs 4 through 8 of this section.

(f) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(3) For the purposes of allocation and apportionment of income, a corporation is taxable in another state if:

(a) by reason of the corporation's business activities carried on in that state it is subjected to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or

(b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(4) Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this section.

(5) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state, or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the

property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(6) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale, or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(7) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(8) (a) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the payer in this state, or

(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state: If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3).

(10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state in the production of business income during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in the production of business income during the tax period.

(11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(12) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(13) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation attributable to the production of business income, and the denominator of which is the total amount paid everywhere during the tax period for compensation attributable to the production of business income.

(14) Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state; or

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and

(i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or

(ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(15) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(16) Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and

(i) the purchaser is the United States government or

(ii) the taxpayer is not taxable in the state of the purchaser.

(17) Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(18) If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in

this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting, provided, the taxpayer's activities in this state are separate and distinct from its operations conducted outside this state and are not a part of a unitary business operation conducted within and without this state. For purposes of this section a "unitary business" is one in which the business conducted within the state is dependent upon or contributory to the business conducted outside this state or if the units of the business within and without this state are closely allied and not capable of separate maintenance as independent businesses;

(b) the exclusions of any one (1) or more of the factors;

(c) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(19) The department of revenue shall prescribe regulations to carry out this section and shall publish such regulations and amendments thereto.

History: En. Sec. 3, Ch. 166, L. 1933; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974.

Amendments

The 1969 amendment substituted "not less than once every three (3) years" for "not less than once a year" after "board shall publish" and inserted "and all changes * * * as they occur" in the second sentence; substituted "may not change * * * or vice versa" for "cannot change from one method of accounting to another method of accounting" in the last sentence.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

The 1974 amendment rewrote this section which read: "If the income of any corporation from sources within the state cannot be properly segregated from income without the state, then, in that event, the amount of the net income returned shall be that proportion of the taxpayer's total net income which the taxpayer's gross business done in the state of Montana bears to the total gross business of the taxpayer, and apportionment shall be made under the rules and regulations prescribed by the state department of revenue, giving consideration to sales, property and payroll and such other factors as may be deemed applicable; provided, however, that the state department of revenue shall, upon the presentation of satisfactory evidence, determine that the income from sources within the state of Montana may be properly segregated from income from sources without the state of Montana and shall allow separate accounting. The department shall publish not less than once every three (3) years, all rules and regulations and all changes in rules and regulations as they occur pertaining to this section. All decisions by the department under this section shall be subject to judicial review in an action prosecuted by the corporation in the district court of Lewis and Clark county. The taxpayer may not change from apportionment by formula to separate accounting or vice versa without first obtaining permission from the department."

Effective Date

Section 3 of Ch. 5, Laws 1974 read "This act shall apply to all taxable years on and after December 31, 1973, whether on a fiscal or calendar year basis."

84-1504. (2299) Computation of license tax—return of net income to be filed—definitions. (1) The license fee shall be computed on the basis of the corporation's total net income for the taxable period. The corporation's taxable period shall be its taxable year for federal income tax pur-

poses. In the event a corporation changes its taxable year, it shall promptly notify the state department of revenue.

(2) Every corporation, subject to the license fee imposed under this chapter, shall for each taxable period render a true and accurate return of its net income for the taxable period in the manner and form to be prescribed by the state department of revenue, and containing such facts, data and information as are appropriate and in the opinion of the state department of revenue necessary to determine the correctness of the net income returned and to carry out the provisions of this act. The return shall be signed by one (1) of the following: the president, the vice-president, the treasurer, the assistant treasurer, or chief accounting officer. If the corporation is reporting on a calendar year basis the return shall be filed with the department of revenue on or before the fifteenth day of May following the close of the calendar year, and if reporting on a fiscal year basis the return shall be filed with the department on or before the fifteenth day of the fifth month following the close of its fiscal year. Upon application a corporation shall be allowed an automatic extension of time for filing its return of one (1) to six (6) months following the date prescribed for filing of its tax return. The application is to be made on such forms as the department of revenue shall prescribe. The department of revenue may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists. The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. The term gross income means all income recognized in determining the corporation's gross income for federal income tax purposes; but shall include interest exempt from federal income tax. No corporation is exempt from the corporation license tax unless specifically provided for under section 84-1501. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under section 84-1501 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal internal revenue code in effect for the taxable year. The term "net income" means the gross income of the corporation less the deductions set forth in section 84-1502.

(3) * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1923; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963; amd. Sec. 1, Ch. 372, L. 1973; amd. Sec. 56, Ch. 516, L. 1973; amd. Sec. 1, Ch. 161, L. 1975.

Amendments

Chapter 372, Laws of 1973, rewrote subsection (1), for prior version of which see parent volume; substituted "taxable period" for "year hereafter, for the year ending on the thirty-first day of December, or for its fiscal year selected under the provisions hereof" near the beginning of the first sentence in subsection (2); substituted "net income for the taxable period" for "annual net income" in the first sentence of subsection (2); substituted "department of revenue" for "board of equalization" and "department" for "board" throughout subsection (2); substituted the requirement for signature by one of the enumerated officers for a requirement of signature by both a principal officer and a financial officer; substituted "following the close of the calendar year" for "in each year" following "fifteenth day of May" in the third sentence of subsection (2); inserted the seventh sentence in subsection (2); substituted "all income recognized in de-

termining the corporation's gross income for federal income tax purposes" for "the income from all sources within the state of Montana recognized in the determination of the corporation's federal income tax liability" in the eighth sentence in subsection (2); inserted the ninth sentence in subsection (2); inserted "set forth in section 84-1502" at the end of the last sentence in subsection (2); and deleted from the end of subsection (2) two sentences disclaiming intent to allow certain federal deductions and also defining "fiscal year."

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" near the end of subsection (1) and throughout subsection (2).

The 1975 amendment substituted "return of one (1) to six (6) months" for "return to the fifteenth day of the third month" in the fourth sentence of subsection (2).

Effective Date

Section 2 of Ch. 372, Laws 1973 read "This act shall apply to taxable years beginning on and after January 1, 1973."

Sale of Assets in Liquidation

Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate licensed tax paid upon the gain realized by the corporation in the sale of its assets in liquidation. Barth v. Montana State Board of Equalization, 148 M 259, 419 P 2d 484, 485.

DECISIONS UNDER FORMER LAW

Operating Loss Deduction

With the exception of the exempt interest exclusion and dividend deduction contained in the Federal Internal Revenue Code, the legislature left intact the interrelation of state corporation licensed gross and net income and federal income tax gross and net income as provided in the Federal Internal Revenue Code; the net operating loss deduction in section 172 of the Federal Internal Revenue Code was allowable in computing a state corporation tax liability. Lazy JD Cattle Co. v. State Board of Equalization, — M —, 504 P 2d 287.

Nothing in the 1971 amendment to section 84-1502 indicated an intention on the part of the legislature to repeal this section's operating loss deduction retroactively. Lazy JD Cattle Co. v. State Board of Equalization, — M —, 504 P 2d 287.

84-1505. (2300) **Assessment and collection of tax.** (1) Assessment and payment of tax, penalty and interest. All taxpayers shall compute the amount of tax payable under this act and shall remit such amount to the state department of revenue on or before the fifteenth day of the fifth month following the close of the taxable period. If the tax is not paid on or before the due date, there shall be assessed a penalty of ten per cent (10%) of the amount of the tax, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax due under this chapter is not paid when due, by reason of extension granted, or otherwise, interest shall be added thereto at the rate of nine per cent (9%) per annum from the due date until paid.

(2) Levy upon and sale of property for payment of corporation licenses taxes. If any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the department shall issue a warrant directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the corporation owning the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket,

in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the corporation against whom it is levied in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the department a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

(3) Action by attorney general. Action may be brought at any time by the attorney general of the state at the instance of the department, in the name of the state to recover the amount of any taxes, penalties and interest due under this act.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R. C. M. 1921; amd. Sec. 2, Ch. 146, L. 1923; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963; amd. Sec. 1, Ch. 324, L. 1969; amd. Sec. 67, Ch. 405, L. 1973.

Amendments

The 1969 amendment raised the interest rate on unpaid taxes from "six per cent (6%)" to "nine per cent (9%)" per annum.

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

Effective Date

Section 2 of Ch. 324, Laws 1969 read "This act is effective as to taxable years ending on and after December 31, 1968."

84-1505.1. Release of tax liens. (1) The state department of revenue shall issue a certificate of release of any lien imposed with respect to any tax due under Title 84, chapter 15, R. C. M. 1947, when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof has been fully satisfied. The state department of revenue may issue a certificate of release if it determines that the lien is unenforceable.

(2) The state department of revenue may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under Title 84, chapter 15, R. C. M. 1947, if:

(a) It finds that the fair market value of that part of the property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which may have priority to such lien;

(b) There is paid to the state treasurer in part satisfaction of the liability secured by the lien, an amount which shall not be less than the value, as determined by the state department of revenue, of the interest of the state of Montana in the part to be discharged; or

(c) The state department of revenue determines at any time that the interest of the state of Montana in the part to be so discharged has no value.

History: En. Sec. 1, Ch. 53, L. 1967; amd. Sec. 57, Ch. 516, L. 1973.

Title of Act

An act to permit release of lien and discharge of property from force of lien imposed with respect to corporation license tax liability.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places in subsection (1); near the beginning of subsection (2); and in subdivisions (2)(b) and (2)(c).

84-1505.2. Immediate payment of tax or deficiency due may be required if delay would jeopardize collection. If the state department of revenue finds that the assessment or collection of the tax or a deficiency in tax due under any corporation license tax statute of Montana for any taxable period will be jeopardized in whole or in part by delay, it may mail notice of its findings to the taxpayer together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the board may declare the taxable period of the taxpayer immediately terminated, and shall mail or issue notice of its findings to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated. A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once.

History: En. Sec. 1, Ch. 246, L. 1969; amd. Sec. 58, Ch. 516, L. 1973.

Title of Act

An act which empowers the state board of equalization to require immediate payment of a tax or deficiency due under any corporation license tax statute of Montana if the board finds that the collection of the tax or deficiency will be jeopardized in whole or in part by delay.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-1507. (2302) **Returns and corrections to be public records.** When the assessment shall be made as provided in this act, the returns, together with any corrections thereof which may have been made by the state department of revenue, shall be filed in the office of said department, and shall constitute public records and be open to inspection as such only upon the order of the governor, and under rules and regulations to be prescribed by the state department of revenue.

History: En. Sec. 7, Ch. 79, L. 1917; re-en. Sec. 2302, R. C. M. 1921; amd. Sec. 3, Ch. 146, L. 1923; amd. Sec. 59, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-1508. (2303) **Regulations—attendance of witnesses—arbitrary assignment of net income.** The state department of revenue shall have power to prescribe forms for the returns and notices and such other

regulations as may from time to time be found necessary for the purpose of carrying into effect the provisions of this act. Jurisdiction is hereby conferred upon the district court of the first judicial district of the state of Montana, in and for the county of Lewis and Clark, to compel attendance of witnesses to testify before the state department of revenue, together with the production of books and such other testimony by appropriate process. When the state department of revenue has reason to believe that the business of any corporation is so conducted as either directly or indirectly to distort the true net income of the corporation and the net income properly attributable to this state, whether by the arbitrary shifting of income through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another corporation carrying on business under a substantially common control, it may require the disclosure of such facts as it deems necessary for the proper computation of the entire net income and the net income properly attributable to this state, and in determining the same, the department shall have regard to the fair profits which would normally arise from the conduct of the business.

History: En. Sec. 8, Ch. 79, L. 1917; re-en. Sec. 2303, R. C. M. 1921; amd. Sec. 4, Ch. 146, L. 1923; amd. Sec. 4, Ch. 166, L. 1933; amd. Sec. 5, Ch. 186, L. 1963; amd. Sec. 60, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

84-1508.1. Determination of tax liability—interest on deficiencies and overpayments. (a) Deficiency assessments. If, the state department of revenue determines that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within thirty (30) days after the mailing of the notice, the taxpayer may file with the state department of revenue a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the thirty (30) day period. If such protest is filed, the state department of revenue shall reconsider the proposed assessment, and if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the state department of revenue's action upon the protest is final when it mails notice of its action to the taxpayer.

When a deficiency is determined and the tax becomes final, the state department of revenue shall mail notice and demand to the taxpayer for the payment thereof, and the tax shall be due and payable at the expiration of ten (10) days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest from the date specified in section 84-1505 for payment of the tax. A certificate by the state department of revenue of the mailing of the notices specified in this subsection shall be prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the notices.

(b) Overpayment of tax—refunds and credits. If the state department of revenue determines that the amount of tax, penalty or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger or consolidation, or to its shareholders upon dissolution.

If the state department of revenue disallows any claim for refund, it shall notify the taxpayer accordingly. At the expiration of thirty (30) days from the mailing of the notice, the state department of revenue's action shall become final, unless within the said thirty (30) day period the taxpayer appeals in writing from the action of said department to the state tax appeal board. If such appeal is made, the state tax appeal board shall grant the taxpayer an oral hearing. After consideration of the appeal and evidence presented, the state tax appeal board shall forthwith mail notice to the taxpayer of its determination. The board's determination is final when it mails notice of its action to the taxpayer.

(c) Except as hereinafter provided for, interest shall be allowed on overpayments at the rate of six per cent (6%) per annum from the due date of the return or from the date of overpayment (whichever date is later) to the date the department of revenue approves refunding or crediting of the overpayment. Interest shall not accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state department of revenue for the purpose of verifying the amount of the overpayment. No interest shall be allowed (1) if the overpayment is refunded within six (6) months from the date the return is due or from the date the return is filed, whichever is later; or (2) if the amount of interest is less than one dollar ($1.00).

A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 186, L. 1963; amd. Sec. 68, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization, except that in the second paragraph of subsection (b), it substituted references to the state tax appeal board for references to the state board of equalization; deleted "shall reconsider its action, and if the taxpaper has so requested" following "If such appeal is made, the state tax appeal board" in the third sentence of the second paragraph of subsection (b) and deleted "in the event of an oral hearing" following "appeal and evidence presented" in the fourth sentence of the second paragraph of subsection (b).

84-1508.2. Periods of limitation—limitations for notification of additional tax extended if taxpayer fails to report change in federal tax—waiver. (1) Except as otherwise provided in this section and in section 84-1513, R. C. M. 1947, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within five (5) years from the date the return was filed. For the purposes of this section a return

filed before the last day prescribed for filing shall be considered as filed on such last day. Where before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax shall not apply when

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax, provided the suspension of the limitation set forth in this section shall last only so long as

(i) the suspension of the federal statute of limitation, or

(ii) until one (1) year after any federal changes have become final or any amended federal return is filed as a result of such suspension of the federal statute, whichever is the latest in time, or

(b) when a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by section 84-1517, R. C. M. 1947, until five (5) years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after five (5) years from the last day prescribed for filing the return or after one (1) year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the state department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the state department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed, or a credit or refund allowed in the event no claim is filed, shall automatically be so extended.

History: En. Sec. 2, Ch. 186, L. 1963; amd. Sec. 1, Ch. 142, L. 1969; amd. Sec. 61, Ch. 516, L. 1973; amd. Sec. 1, Ch. 101, L. 1974.

Amendments

The 1969 amendment substituted "in this section and in section 84-1513, R. C. M. 1947" for "in section 84-1513" in the first sentence of the section; substituted "such last day" for "that day" at the end of the second sentence; and added the provision designated as subdivision (1) (b).

The 1973 amendment substituted "department of revenue" for "board of equalization" twice in subsection (2).

The 1974 amendment inserted the provision designated as subdivision (1)(a) and inserted the subdivision designation (1)(b).

Effective Date

Section 2 of Ch. 101, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

84-1509. (2303.1) **Consolidated returns—computation and procedure on.** (1) Corporations which are affiliated may not file a consolidated return unless at least eighty per cent (80%) of all classes of stock of each corporation involved is owned directly or indirectly by one (1) or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and permission to file a consolidated return is given by the state department of revenue.

For purposes of this section, a "unitary business operation" means one in which the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations.

(3) If the conditions of subsections (1) and (2) of this section are met, the state department of revenue may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(4) Any corporation liable to report under this act and owning, or controlling, either directly or indirectly, at least eighty per cent (80%) of all classes of stock of each corporation involved, may be required to make a consolidated report showing the combined net income[,] such assets of the corporation as are required for the purposes of this act, and such other information as the state department of revenue may require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to report under this act and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, such assets of the corporation as are required for the purposes of this act, and such other information as the state department of revenue may require, but excluding intercorporate stockholdings and intercorporate accounts. In case it shall appear to the state department of revenue that any arrangement exists in such a manner as to improperly reflect the business done, the segregable assets or the entire net income earned from business done in this state, the state department of revenue is authorized and empowered, in such manner as it may determine, to equitably adjust the tax.

History: En. Sec. 5, Ch. 166, L. 1933; amd. Sec. 1, Ch. 243, L. 1969; amd. Sec. 62, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted subsections (1) to (3) for former subsection (a) which provided that affiliated corporations make a consolidated return if authorized and/or required by the state board of equalization; redesignated former subsection (b) as subsection (4) and inserted "at least eighty per cent * * * of each corporation involved" after "controlling, either directly or indirectly" in the first sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" in subsections (2), (3) and (4).

84-1511. (2303.3) **Return and payment of tax by corporations, etc.**

Sale of Assets in Liquidation

Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate license tax paid upon the gain realized by the corporation in the sale of its assets in liquidation. Barth v. Montana State Board of Equalization, 148 M 259, 419 P 2d 484, 485.

84-1512. (2303.4) **Where omission deemed committed—certificate of department as evidence.** The failure to do any act, required by or under the provisions of this act, shall be deemed an act committed in the office of the state department of revenue in the state capitol building, in Helena, Montana. The certificates of the state department of revenue to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions

of this act, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

History: En. Sec. 8, Ch. 166, L. 1933; amd. Sec. 63, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the first sentence and near the beginning of the second sentence.

84-1514. (2303.6) **Delinquency — suspension — forfeiture — dissolution.** If a tax computed and levied hereunder is not paid or if a return is not filed before five o'clock P. M. on the last day of the eleventh month after the date of delinquency the corporate powers, rights and privileges of the delinquent taxpayer, if it be a domestic corporation, shall be suspended, and if the delinquent taxpayer be a foreign corporation it shall thereupon forfeit its rights to do intrastate business in this state. Provided that, if any domestic corporation shall fail, for a period of five consecutive years, to either file a return or to pay the corporation license tax, the state department of revenue shall notify such corporation by mail addressed to the latest address on file in its office that such corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within a period of sixty (60) days from and after the mailing of such notice, and, if such delinquent reports are not made and all delinquent corporation licenses are not paid before the expiration of said sixty (60) day period, the state department of revenue shall certify this fact to the secretary of state and upon receipt of such certificate, the said corporation shall be dissolved and the secretary of state shall indicate, by his records, such dissolution.

The state department of revenue shall transmit the name of each such corporation to the secretary of state, who shall immediately record the same in such manner that it may be available to the public. The suspension, forfeiture or dissolution herein provided for shall become effective immediately such record is made, and the certificate of the secretary of state shall be conclusive evidence of such suspension, forfeiture or dissolution.

History: En. Sec. 10, Ch. 166, L. 1933; amd. Sec. 1, Ch. 94, L. 1947; amd. Sec. 64, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning and end of the second sentence of the first paragraph and at the beginning of the second paragraph.

84-1515. (2303.7) **Reviver of corporation after suspension or forfeiture.** Any corporation which has suffered the suspension or forfeiture referred to in the preceding section may be relieved therefrom upon making application therefor in writing supported by a certificate from the state department of revenue showing that the required return has been made and filed and/or that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors, and the same shall be filed with the secretary of state, for which he shall receive a filing and recording fee of five dollars ($5). In case the application is made more

than one (1) year from the date the suspension or forfeiture occurred the applicant shall pay twice the amount of the tax and penalties due the state for the taxable year with respect to which the suspension or forfeiture occurred, and upon such payment the secretary of state shall issue a certificate of reviver for which he shall collect a fee of five dollars ($5) and thereupon the applicant shall be revived. The reviver shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture. The certificate of reviver shall be prima facie evidence of the reviver. Any certificate of reviver provided for in this section may be recorded in the office of the county recorder in any county of this state.

History: En. Sec. 11, Ch. 166, L. 1933; amd. Sec. 1, Ch. 49, L. 1947; amd. Sec. 15, Ch. 117, L. 1961; amd. Sec. 1, Ch. 52, L. 1967; amd. Sec. 65, Ch. 516, L. 1973.

Amendments

The 1967 amendment substituted "more than one (1) year from the date" for "in any taxable year other than the taxable year in which" after "application is made" and substituted "with respect to which" for "in which" after "for the taxable year," both in the third sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" in the middle of the first sentence.

Effective Date

Section 2 of Ch. 52, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 18, 1967.

Contract Made During Suspension

Statute providing that reviver shall be without prejudice to any action, defense or right which has accrued by reason of original suspension or forfeiture relates to right of corporation to do business rather than to nonenforceability of contract made by corporation while suspended. Manufacturers Acceptance Corp. v. Krsul, 151 M 28, 438 P 2d 667.

84-1516. (2303.8) **Penalty for violation of act.** Every officer or employee of any corporation or other person, who, without fraudulent intent, shall fail to make, render, sign or verify any return, or to supply any information within the time required by or under the provisions of this act, shall be liable to a penalty of not more than one hundred dollars ($100) to be imposed, assessed, and collected by the state department of revenue in the same manner as is provided in this act with regard to delinquent taxes.

History: En. Sec. 12, Ch. 166, L. 1933; amd. Sec. 66, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1517. (2303.9) **Failure to make return—estimate and investigation of net income—copy of federal return to be furnished on request—report of change in federal tax—copy of amended federal returns.** (1) If any taxpayer fails to make return as herein required, the state department of revenue is authorized to make an estimate of the taxes due from such taxpayer from any information in its possession.

(2) The state department of revenue, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of net income of any corporations where information has been obtained, shall also have power to examine or to cause to have examined by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be

included in the return, and may require the attendance of any officer or employee of the corporation rendering such return or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for its information.

(3) Every corporation shall, upon request of the state department of revenue, furnish a copy of its federal income tax return and the computation schedule filed for such taxable year or years as the said department may specify in its request. If the amount of a corporation taxable income reported on its federal income tax return or the computation schedule filed for any taxable year is changed or corrected by the United States internal revenue service or other competent authority, the corporation shall report such proposed change or correction to the state department of revenue within ninety (90) days after receiving official notice thereof. Any corporation filing an amended federal income tax return changing or correcting its taxable income for any taxable year shall also file an amended return with the state department of revenue within ninety (90) days thereafter.

History: En. Sec. 13, Ch. 166, L. 1933; amd. Sec. 2, Ch. 142, L. 1969; amd. Sec. 67, Ch. 516, L. 1973.

Amendments

The 1969 amendment redesignated subsections (a) and (b) as subsections (1) and (2); and added subsection (3).

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

Effective Date

Section 3 of Ch. 142, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

84-1518. (2303.10) **Reciprocity with federal and other states' revenue officers regarding returns.** The state department of revenue under such rules as they may prescribe, may permit, notwithstanding the provisions of this act as to secrecy, the commissioner of internal revenue of the United States, or the proper officer of any state imposing a tax on or according to income, to inspect the returns of any taxpayer making returns under this act, or may furnish to such officer or his authorized representative an abstract or any return or matter contained in any affidavit, statement or certificate made or filed in connection with any return or any tax or credit claimed as a deduction from any tax, or any information disclosed by the report of any investigation relating to the income or tax of any taxpayer; but such permission shall be granted or information furnished to such officer, or his representative, only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act.

History: En. Sec. 14, Ch. 166, L. 1933; amd. Sec. 68, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-1519. Short title. This act may be cited as "The Montana Corporate License Tax Credit Act of 1975."

History: En. 84-1519 by Sec. 1, Ch. 435, L. 1975.

Title of Act

An act to provide an incentive for de-

velopment of new industry in Montana by the allowance of a state license tax credit for new and expanding corporations.

84-1520. Definitions. As used in this act:

(a) "Manufacturing" means the process of mechanical or chemical transformation of materials or substances into new products, as described in the standard industrial classification manual of 1972, by the office of management and budget of the United States.

(b) "New corporation" means a corporation engaging in manufacturing for the first time in this state and manufacturing a product not currently manufactured or substantially similar to a product currently manufactured by that corporation or any affiliate corporation in this state; it does not include reorganizing an existing corporation in this state or the creation of a parent, subsidiary or affiliate of which fifty per cent (50%) or more is owned or controlled by the same person, corporation or association.

(c) "Expanding" means to expand or diversify a present operation to increase total full time jobs by thirty per cent (30%) or more.

(d) "Department" means the state department of revenue.

History: En. 84-1520 by Sec. 2, Ch. 435, L. 1975.

84-1521, 84-1522. [No sections 84-1521, 84-1522 enacted in 1975.]

84-1523. Tax credit—determination—limitation. (1) A new or expanding manufacturing corporation may receive a license tax credit based on a percentage of wages paid its new employees within this state for a period of three (3) years as follows:

(a) the first three (3) years of operation of a new corporation or the first three (3) years of expansion of an expanding corporation a credit of one per cent (1%) of the total new wages paid in this state as wages are defined in section 87-149 may be allowed.

(2) In determining total wages for an expanding corporation only those wages paid in support of the expansion are considered in ascertaining the credit; the payroll and number of jobs of the corporation in the twelve (12) month period immediately preceding the expansion are averaged to determine eligibility for the credit.

History: En. 84-1523 by Sec. 3, Ch. 435, L. 1975.

84-1524. Department duties. The department shall determine the eligibility of a corporation for this credit, promulgate rules, prepare forms, maintain records and perform other duties necessary to carry out this act.

History: En. 84-1524 by Sec. 4, Ch. 435, L. 1975.

84-1525. Exclusion. This credit is available only to those new and expanding corporations that provide jobs within the state of Montana.

History: En. 84-1525 by Sec. 5, Ch. 435, L. 1975.

84-1526. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any person relating to the liability of such person in respect to the tax imposed by this chapter for any taxable period.

(2) Any such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded.

History: En. 84-1526 by Sec. 1, Ch. 353, L. 1977.

Title of Act

An act to authorize the director of revenue to enter into closing agreements relating to taxes imposed by chapters 15, 49, and 69, of Title 84, R. C. M. 1947.

CHAPTER 16—LICENSE TAXES—ELECTRICAL ENERGY PRODUCERS

Section
84-1601. Electrical energy producers' license tax.
84-1602. Payment of tax—not to be set out on customers' bills.
84-1603. Disposition of revenue—interest on delinquency.
84-1604. Statement of producer—contents—time for filing.
84-1605. Inspection of books of producer.
84-1608. False statements constitute perjury.
84-1610. Procedure to compute tax in absence of statement.
84-1611. Procedure for collection of tax.

84-1601. (2343.1) **Electrical energy producers' license tax.** In addition to the license tax now provided by law, each person or other organization now engaged in the generation, manufacture, or production of electricity and electrical energy in the state of Montana, either through water power or by any other means, for barter, sale, or exchange, and hereinafter referred to as the "producer", shall on or before the 30th day after each calendar quarter, quarterly periods ending March 31, June 30, September 30, and December 31, render a statement to the department of revenue showing the gross amount except for actual and necessary plant use required to produce the energy of electricity and electrical energy produced, manufactured, or generated during the preceding calendar quarter without any deduction and shall pay a license tax thereon in the sum of $.0002 per kilowatt hour on all such electricity and electrical energy generated, manufactured, or produced, measured at the place of production and as shown on the statement required in the manner and within the time hereinafter provided.

History: En. Sec. 1, Ch. 51, Ex. L. 1933; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 1, Ch. 214, L. 1957; amd. Sec. 1, Ch. 5, Ex. L. 1969; amd. Sec. 1, Ch. 391, L. 1971; amd. Sec. 69, Ch. 516, L. 1973; amd. Sec. 4, Ch. 52, L. 1977; amd. Sec. 1, Ch. 401, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 52 and once by Ch. 401. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment substituted "May, 1969" for "August, 1957" and added a proviso increasing the rate of tax from 1¼% to 1.438% for the two taxable years commencing on or after April 1, 1969.

The 1971 amendment made the 1.438% rate permanent and added the clause following the final semicolon.

The 1973 amendment substituted "department of revenue" for "board of equalization" in the middle of the section.

Chapter 52, Laws of 1977, substituted "each person" near the beginning of the section for "each and every individual, firm, partnership, common-law trust, corporation, association"; deleted "beginning with the fifteenth day of May, 1969" before "render a statement" in the first sentence; and made minor changes in phraseology, punctuation and style.

Chapter 401, Laws of 1977, substituted requirement of quarterly reports of energy produced for the former requirement of monthly reports of money received from sale of energy produced; substituted the tax of $.0002 per kilowatt hour of energy produced for the former tax of 1.438% of the gross amount of money received from the sale of energy; deleted a provision at the end of the section that the tax be effective for the taxable year commencing April 1, 1969, and each taxable year thereafter; and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 391, Laws 1971 read "This act is effective on April 1, 1971."

Cross-References

Multistate tax compact, sec. 84-6701.

84-1602. (2343.2) **Payment of tax—not to be set out on customers' bills.** The license tax shall be remitted with the statement and paid on or before the 30th day of the month after each calendar quarter. No bill, statement, or account rendered or given any customer by any organization affected by the provisions of this act shall set out or contain, as a separate item, any amount on account or by reason of the license tax imposed by this act.

History: En. Sec. 2, Ch. 51, Ex. L. 1933; amd. Sec. 2, Ch. 5, Ex. L. 1969; amd. Sec. 2, Ch. 401, L. 1977.

Amendments

The 1969 amendment deleted "beginning with the fifteenth (15th) day of April, 1934" at the end of the first sentence.

The 1977 amendment changed the due date for payment from the fifteenth of each month to the thirtieth day following each calendar quarter; and made minor changes in phraseology, punctuation and style.

Effective Date

Section 3 of Ch. 5, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

84-1603. (2343.3) **Disposition of revenue—interest on delinquency.** The department of revenue shall receipt therefor and promptly turn the same over to the state treasurer. Taxes not met on the due date shall become delinquent, and a penalty of 10% plus interest at the rate of 1% per month or fraction of a month computed on the total of tax and penalty shall be charged.

History: En. Sec. 3, Ch. 51, Ex. L. 1933; amd. Sec. 20(F), Ch. 109, L. 1935; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 6, Ch. 14, L. 1941; amd. Sec. 70, Ch. 516, L. 1973; amd. Sec. 3, Ch. 401, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

The 1977 amendment inserted a penalty of 10% on delinquent taxes and changed the interest rate on delinquent taxes from 12% per annum to 1% per month or fraction of a month; and made a minor change in phraseology.

84-1604. (2343.4) **Statement of producer—contents—time for filing.** On or before the fifteenth (15) day of April, 1934, every producer referred to in section 84-1601, engaged in the production, generation or manufacture of electricity or electrical energy, shall make and file with the state

department of revenue of the state of Montana, on forms prescribed by the state department of revenue, an acknowledged and verified certificate which shall contain:

(a) to (f). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 51, Ex. L. 1933; amd. Sec. 71, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" twice in the preliminary clause.

84-1605. (2343.5) **Inspection of books of producer.** The books and records of such producer shall be subject to inspection by the department of revenue, its agents or employees, during reasonable hours.

History: En. Sec. 5, Ch. 51, Ex. L. 1933; amd. Sec. 72, Ch. 516, L. 1973; amd. Sec. 4, Ch. 401, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

The 1977 amendment deleted the former first sentence which required sworn monthly statements showing the gross proceeds from sales of electrical energy; and made a minor change in phraseology.

84-1606. (2343.6) **Repealed.**

Repeal

Section 84-1606 (Sec. 6, Ch. 51, Ex. L. 1933; Sec. 73, Ch. 516, L. 1973), relating to exemptions, was repealed by Sec. 7, Ch. 401, Laws 1977.

84-1608. (2343.8) **False statements constitute perjury.** Any person, officer, partner, agent, or representative of any producer referred to in 84-1601 who makes any false statement, affidavit, certificate, report, or statement required to be made to the department of revenue is guilty of perjury and upon conviction shall be punished as provided in the Criminal Code of 1973, as amended.

History: En. Sec. 8, Ch. 51, Ex. L. 1933; amd. Sec. 74, Ch. 516, L. 1973; amd. Sec. 6, Ch. 126, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle of the section.

The 1977 amendment substituted "as provided in the Criminal Code of 1973, as amended" at the end of the section for "by imprisonment in the state penitentiary for not less than one (1) nor more than fourteen (14) years"; and made minor changes in phraseology, punctuation and style.

84-1610. Procedure to compute tax in absence of statement. If any person fails, neglects, or refuses to file any statement required by 84-1601 within the time therein required, the department of revenue shall, after such time has expired, proceed to inform itself, as it best may, regarding the number of KWH produced by such person in this state during such quarter and compute the amount of taxes due to the state from such person for such quarter and add the penalty and interest as required by 84-1603. The department shall mail to the person required to file a quarterly report and pay such tax a letter setting forth the amount of tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made within such time a lien may be filed. Upon receipt of the letter, the person shall remit to the department the full amount of tax,

penalty, and interest within 15 days. The 10% penalty may be waived by the department if reasonable cause for failure and neglect to file the statement required by 84-1609 is provided to the department.

History: En. 84-1610 by Sec. 5, Ch. 401, L. 1977.

Title of Act

An act to change the rate and method of computing the electrical energy producers' license tax and to provide for quarterly reporting; amending sections 84-1601 through 84-1603 and 84-1605, R. C. M. 1947; and repealing sections 84-1606 and 70-805, R. C. M. 1947.

84-1611. Procedure for collection of tax. All tax, penalty, and interest due from any person under this act is a lien upon any and all real property of such person upon the filing by the department of revenue of the duplicate tax assessment statement in the office of the county clerk in the county where such real property is situated. The lien has precedence over any other claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

History: En. 84-1611 by Sec. 6, Ch. 401, L. 1977.

Repealing Clause

Section 7 of Ch. 405, Laws 1977 read "Sections 84-1606 and 70-805, R. C. M. 1947, are repealed."

CHAPTER 17—LICENSE TAXES—EXPRESS COMPANIES

Section
84-1702. Statements to be filed with state department of revenue.
84-1703. Gross receipts—how ascertained.
84-1707. Amount and collection of license tax.

84-1702. (2306) **Statements to be filed with state department of revenue.** Any express company as defined in the preceding section, doing business in this state, shall annually, between the first and thirtieth day of April, after the approval of this act, under oath of the person constituting such company, if a person, or under oath of the president, treasurer, superintendent or chief officer in this state of such association or corporation, if an association or corporation, make and file with the state department of revenue, a statement in such form as the department may prescribe, containing the following facts:

First through Seventh. * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 87, L. 1917; re-en. Sec. 2306, R. C. M. 1921; amd. Sec. 75, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the preliminary clause.

Cross-References

Multistate tax compact, sec. 84-6701.

84-1703. (2307) **Gross receipts—how ascertained.**—The state department of revenue shall proceed to ascertain and determine on or before the first Monday of August in each year the entire gross receipts of each of said express companies for business done within the state of Montana for the year next preceding the first day of April, and the amount so ascertained by the said board [department] shall be held and deemed to

be the gross receipts of such express company for business done within the state of Montana for the year under consideration.

History: En. Sec. 3, Ch. 87, L. 1917; re-en. Sec. 2307, R. C. M. 1921; amd. Sec. 76, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-1704 to 84-1706. (2308 to 2310) **Repealed.**

Repeal

Sections 84-1704 to 84-1706 (Secs. 4 to 6, Ch. 87, L. 1917; Secs. 69, 70, Ch. 405, L. 1973; Sec. 77, Ch. 516, L. 1973), relating to failure to make statement and production of books, were repealed by Sec. 5, Ch. 36, Laws 1977.

84-1707. (2311) **Amount and collection of license tax.** The state department of revenue shall, on the first Monday of August, annually, enter in a book provided for that purpose the amount of gross receipts of express companies doing business in this state for the year next preceding the first day of April, as determined by the provisions of this act. It shall be the duty of the state treasurer annually to collect from each such express company doing business in this state, a sum in the nature of a license tax to be computed by taking four per centum of the amount fixed by the state department of revenue as the gross receipts of such express company for business done within the state for the year next preceding the first day of April as determined and certified by the state department of revenue; provided, however, that nothing contained in this act shall exempt or relieve any express company from the assessment and taxation of its tangible property in the manner authorized and provided by law. All licenses collected under the provisions of this act shall be accredited to the general fund of the state.

History: En. Sec. 7, Ch. 87, L. 1917; amd. Sec. 1, Ch. 150, L. 1921; re-en. Sec. 2311, R. C. M. 1921; amd. Sec. 78, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-1708. (2312) **Repealed.**

Repeal

Section 84-1708 (Sec. 8, Ch. 87, L. 1917), relating to collection actions, was repealed by Sec. 5, Ch. 36, Laws 1977.

CHAPTER 18—LICENSE TAXES—GASOLINE DEALERS AND DISTRIBUTORS—SPECIAL FUEL TAX

Section
84-1831. Definitions.
84-1832. Tax imposed.
84-1832.1. Tax to be collected on diesel fuel and liquid petroleum gas, when.
84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits.
84-1834. Special fuel dealers' and special fuel users' records.
84-1835. Returns and payments.
84-1836. Credits.
84-1837. Procedures for credits.
84-1838. Administrative powers.
84-1840. Disposition of funds.

84-1840.1. Allocation of funds—participation in railroad grade crossing protection on public highways, roads or streets, other than those designated on the interstate, primary or urban system.
84-1841. Judicial review and appeals.
84-1842. Special fuel user's temporary trip permits—nonresident agricultural harvesting equipment special fuel permit—agents by whom issued.
84-1843. Fees for temporary permits—time of expiration—disposition of fees—forms.
84-1844. Penalty for operation without temporary permit—compliance bonds.
84-1845. Short title.
84-1846. Definitions.
84-1847. Gasoline license tax—amount.
84-1849. Distributors' statements—payment of the tax.
84-1850. Examination of records.
84-1851. Records to be kept.
84-1852. Inspection of records.
84-1853. Invoice of distributors and aviation dealers.
84-1854. Information reports.
84-1855. Refund of gasoline license tax—procedure.
84-1855.1. Unlawful use of aviation gasoline.
84-1856. Timely mailing treated as timely filing and paying.
84-1857. License and bond of gasoline distributors.
84-1858. Penalties—delinquent payment—procedure in case of failure to file statement or pay tax—lien for tax.
84-1859. Penalties.
84-1860. Statute of limitations.
84-1861. Rules and regulations to be established by state department.
84-1862. Tax to be collected on motor vehicles self-propelled by a liquefied petroleum gas.
84-1862.1. Temporary trip permit required.
84-1863. Certificate and fee nontransferable.
84-1864. Violations and penalties.
84-1865. Disposition of funds.

84-1801, 84-1801.1, 84-1802, 84-1802.1, 84-1803, 84-1803.1, 84-1804, 84-1805, 84-1805.1, 84-1806 to 84-1811. (2381.11 to 2381.21) Repealed.

Repeal

Sections 84-1801, 84-1801.1, 84-1802, 84-1802.1, 84-1803, 84-1803.1, 84-1804, 84-1805, 84-1805.1, 84-1806 to 84-1811 (Secs. 1, 3 to 12, Ch. 19, L. 1927; Sec. 4, Ch. 92 L. 1929; Sec. 1, Ch. 175, L. 1929; Sec. 4, Ch. 6, L. 1931; Sec. 1, Ch. 170, L. 1933; Sec. 1, Ch. 116, L. 1935; Sec. 1, Ch. 63, L. 1943; Sec. 1, Ch. 202, L. 1949; Sec. 1, Ch. 52, L. 1951; Sec. 1, Ch. 217, L. 1953; Secs. 1, 2, Ch. 17, L. 1955; Sec. 1, Ch. 230, L. 1957; Sec. 1, Ch. 175, L. 1959; Secs. 1, 2, Ch. 64, L. 1963; Secs. 2 to 6, Ch. 70, L. 1963; Sec. 214, Ch. 147, L. 1963; Sec. 1, Ch. 6, Ex. L. 1967; Sec. 1, Ch. 355, L. 1969), relating to the gasoline license tax, were repealed by Sec. 20, Ch. 369, Laws 1969.

Compiler's Notes

Section 1 of Ch. 355, Laws 1969 purported to amend section 84-1801.1 to increase the tax from six and one-half cents to seven cents for the period from July 1, 1969 to July 1, 1971.

84-1813. (2381.23) Repealed.

Repeal

Section 84-1813 (Sec. 2, Ch. 116, L. 1935; Sec. 1, Ch. 210, L. 1955; Sec. 1, Ch. 73, L. 1963), relating to collection of tax on motor fuel, was repealed by Sec. 1, Ch. 60, L. 1969 and Sec. 20, Ch. 369, Laws 1969. The language of section 84-1813 was re-enacted as section 84-1832.1.

84-1814. (2381.24) Repealed.

Repeal

Section 84-1814 (Sec. 15, Ch. 19, L. 1927), relating to delinquency in payment of the gasoline license tax as a misdemeanor, was repealed by Sec. 20, Ch. 369, Laws 1969.

84-1818, 84-1818.1, 84-1819 to 84-1823. (2396.4 to 2396.9) Repealed.

Repeal

Sections 84-1818, 84-1818.1, 84-1819 to 84-1823 (Secs. 1, 2, Ch. 17, L. 1927; Sec. 1, Ch. 168, L. 1929; Sec. 1, Ch. 175, L.

1931; Secs. 1 to 4, Ch. 157, L. 1933; Sec. 1, Ch. 96, L. 1937; Sec. 1, Ch. 67, L. 1939; Sec. 1, Ch. 130, L. 1947; Sec. 1, Ch. 168, L. 1949; Sec. 1, Ch. 198, L. 1949; Sec. 1, Ch. 221, L. 1953; Secs. 3, 4, Ch. 17, L. 1955; Sec. 1, Ch. 212, L. 1955; Sec. 1, Ch. 17, L. 1963; Secs. 3, 4, Ch. 64, L. 1963; Sec. 1, Ch. 70, L. 1963; Sec. 6, Ch. 126, L. 1963; Sec. 221, Ch. 147, L. 1963; Sec. 1, Ch. 224, L. 1963; Sec. 2, Ch. 251, L. 1967), relating to gasoline tax refunds and to the licensing of gasoline dealers and distributors, were repealed by Sec. 20, Ch. 369, Laws 1969.

84-1828, 84-1829. Repealed.

Repeal

Sections 84-1828 and 84-1829 (Secs. 5, 6, Ch. 162, L. 1945), relating to the definition of terms and effect of the "Special Fuel Tax Act" on the license tax upon diesel fuel, were repealed by Sec. 20, Ch. 369, Laws 1969.

84-1830. Title.

Cross-References

Multistate tax compact, sec. 84-6701.

84-1831. Definitions. As used in this act, the following definitions shall apply:

(a) * * * [Same as parent volume.]

(b) "Department" means the state department of revenue.

(c) and (d) * * * [Same as parent volume.]

(e) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than forty-six degrees (46°) A.P.I. (American Petroleum Institute) gravity test except liquid petroleum gas, when actually sold for use in motor vehicles propelled upon the public highways or streets within the state of Montana.

(f) to (h) * * * [Same as parent volume.]

(i) "Bond" means: (1) a bond duly executed by such special fuel dealer or special fuel user as principal with a corporate surety qualified under the laws of Montana, which bond shall be payable to the state of Montana conditioned upon faithful performance of all requirements of this act, including the payment of all taxes, penalties and other obligations of such special fuel dealer or special fuel user arising out of this act; or (2) a deposit with the state treasurer by the special fuel dealer or special fuel user under such terms and conditions as the department may prescribe of a like amount of lawful money of the United States or bonds or other obligations of the United States or the state of Montana or of any county thereof, of an actual market value not less than the amount so fixed by the department.

History: En. Sec. 2, Ch. 162, L. 1955; amd. Sec. 3, Ch. 247, L. 1959; amd. Sec. 1, Ch. 66, L. 1963; amd. Sec. 7, Ch. 70, L. 1963; amd. Sec. 12-106, Ch. 197, L. 1965; amd. Sec. 79, Ch. 516, L. 1973; amd. Sec. 1, Ch. 473, L. 1975.

Amendments

The 1973 amendment substituted subdivision (b) for a subdivision defining "board"; and substituted "department" for "board" in subdivision (i).

The 1975 amendment deleted "liquid petroleum gases and also" before "diesel fuel" in subdivision (e); inserted "except liquid petroleum gas" in subdivision (e); and substituted "department" for "board" at the end of subdivision (i).

84-1832. Tax imposed. There is hereby levied and imposed a tax on the use of each and every gallon of special fuel in any motor vehicle while operated upon the highways, equivalent to the lawful tax levied on motor

fuel under section 84-1832.1. Said tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such special fuel dealer from the special fuel user and shall be paid over to the department as hereinafter provided. Said tax, with respect to special fuel acquired by any special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the consumption of such fuel in the propulsion of a motor vehicle upon the highways of the state and shall be paid over to the department by the special fuel user as hereinafter provided. The various counties, incorporated cities and towns and school districts of this state shall be exempt from the levy and imposition of this tax.

History: En. Sec. 3, Ch. 162, L. 1955; amd. Sec. 2, Ch. 66, L. 1963; amd. Sec. 3, Ch. 60, L. 1969; amd. Sec. 1, Ch. 12, L. 1971; amd. Sec. 1, Ch. 277, L. 1971; amd. Sec. 80, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted the reference to "section 84-1832.1" for a reference to repealed "section 84-1813."

Chapter 12, Laws of 1971, substituted a reference to section 84-1847 for a reference to a section 84-1802 in a clause relating to liquid petroleum gases appearing at the end of the first sentence.

Chapter 277, Laws of 1971, deleted "or on liquid petroleum gases under section 84-1847" from the end of the first sentence.

The 1973 amendment substituted "department" for "board" near the end of the second and third sentences.

84-1832.1. Tax to be collected on diesel fuel and liquid petroleum gas, when. The state department of revenue shall, under the provisions of rules and regulations issued by the department, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to 10 cents for each gallon of diesel fuel or other volatile liquid except liquid petroleum gas, of less than forty-six degrees (46°) A.P.I. (American Petroleum Institute) gravity test when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state of Montana, or used in motor vehicles, motorized equipment and the internal combustion of any and all engines including stationary engines used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipalities, or other political subdivisions.

History: En. 84-1832.1 by Sec. 2, Ch. 60, L. 1969; amd. Sec. 2, Ch. 277, L. 1971; amd. Sec. 81, Ch. 516, L. 1973; amd. Sec. 2, Ch. 473, L. 1975; amd. Sec. 1, Ch. 514, L. 1975, amd. Sec. 4, Ch. 390, L. 1977.

Compiler's Notes

Section 7, Ch. 473, Laws of 1975 provided: "If House Bill No. 198 and this bill are each enacted into law in 1975, it is the intent of the legislature that section 2 of this act controls the taxation of liquid petroleum gas under section 84-1832.1." House Bill No. 198 was enacted and is in section 84-1840.

Title of Act

An act to repeal section 84-1813, R. C. M. 1947, and to re-enact its language as a new section for the purpose of removing the statute establishing a tax on diesel fuel from the gasoline license tax laws and its proper placement in the laws pertaining to special fuel taxes; and amending section 84-1832, R. C. M. 1947, to change the reference to section 84-1813 therein to 84-1832.1.

Amendments

The 1971 amendment inserted the clause imposing a tax of seven cents per gallon

on liquid petroleum gas in the middle of the section.

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

Chapter 473, Laws of 1975, inserted "except liquid petroleum" after "other volatile liquid" near the middle of the section; and deleted "and seven cents ($.07) for each gallon of liquid petroleum gas" after "gravity test" near the middle of the section.

Chapter 514, Laws of 1975, increased the tax on "diesel fuel or other volatile liquid" from 9¢ to 9¾¢ per gallon; and increased the deleted tax on liquid petroleum gas from 7¢ to 7¾¢ per gallon.

The 1977 amendment increased the tax from nine and three-quarters cents to ten cents per gallon and made a minor change in phraseology.

84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits. (a) Required: It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is the holder of an uncanceled fuel dealers' license issued to him by the department.

Every special fuel user shall obtain from the department, prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel users' license, and a special fuel vehicle permit for each such vehicle or vehicles operated by him upon the highways as herein defined, which permit shall at all times be carried in the vehicle for which it was issued, and shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, any authorized employee of the department of revenue, or any other law enforcement officer.

A special fuel user's license or permit is not required of any person whose sole use of special fuel is for the propulsion of a privately operated passenger automobile provided the person purchases special fuel, tax paid, from a licensed special fuel dealer in this state. For purposes of this exemption, a privately operated passenger vehicle does not include a motor vehicle used for the transportation of persons for hire or for compensation or designed, used, or maintained primarily for transportation of property.

Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel users' "courtesy" vehicle permit. The permit shall not be transferable and shall be valid for ninety (90) days. Permits will be issued at no cost to the user by the department of revenue, scale house personnel and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of thirty (30) gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(b) Application: Application for a special fuel dealer's license, a special fuel user's license, or a special fuel vehicle permit shall be made to the board unless otherwise provided herein.

(c) Form of application: The application shall be filed upon a form prepared and furnished by the department. The application shall contain such information as the department deems necessary.

(d) Bond: Except as herein provided, no special fuel dealer's license or special fuel user's license shall be issued to any person or continued in force unless such person has furnished bond, as defined in section 84-1831

(i) and in such form as the department may require to secure its compliance with this act, and the payment of any and all taxes, interest and penalties due and to become due hereunder. Upon application, the department may waive the bond requirement of any resident special fuel user who establishes to the reasonable satisfaction of the board that the tax as herein provided is not delinquent or that interest or penalties are not accrued under the provisions of this act.

The total amount of the bond or bonds required of any special fuel dealer or special fuel user shall be equivalent to twice his estimated monthly tax payments as hereinafter provided, determined in such manner as the department may deem proper; provided, however, that the total amount of the bond or bonds shall never be less than five thousand dollars ($5,000) for any special fuel user awarded a contract in accordance with section 84-1832.1, nor less than five hundred dollars ($500) for any other special fuel user; and not less than one thousand dollars ($1,000) for a special fuel dealer.

(e) Issuance: Upon receipt of the application and bond in proper form, the department shall issue to the applicant a license to act as a special fuel dealer or special fuel user or a special fuel vehicle permit; provided, however, the department may refuse to issue a special fuel dealer's license, a special fuel user's license or a special fuel vehicle permit to any person: (1) who formerly held either type of license or permit which, prior to the time of filing application has been revoked for cause; or (2) who is not the real party in interest and where the license or permit of the real party in interest has been revoked for cause prior to the time of filing such application; or (3) upon other sufficient cause being shown. Before such refusal, the department shall grant the applicant a hearing and shall grant him at least ten (10) days' written notice of the time and place thereof.

(f) and (g). * * * [Same as parent volume.]

(h) Revocation, suspension, cancellation and surrender of license and permit: The department may revoke the license of any special fuel dealer or special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking such license or permit, the department shall notify the licensee or permittee of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of the department, requiring him to appear before the department on a day and hour specified in such notice, not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them, should not be revoked; provided, however, that at any time prior to and pending such hearing the department may, in the exercise of reasonable discretion, suspend such license or permit.

Upon revocation by the department of any such license or permit, the holder thereof shall immediately surrender the same to the department for cancellation; and the holder of any such permit, having permanently discontinued the use of any vehicle for which the permit was issued, for whatever reason, shall immediately surrender the same to the department for cancellation.

The department shall cancel any license to act as a special fuel dealer or a special fuel user or any special fuel vehicle permit immediately upon surrender thereof by the holder.

(i) Release of surety: Any surety on a bond furnished by a special fuel dealer or special fuel user as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty (30) day period. The department shall promptly upon receiving any such request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel dealer or special fuel user shall, on or before the expiration of the thirty (30) day period, file a new bond, in accordance with the requirements of this section, or make a deposit in lieu thereof as provided in section 84-1831 (i), the department forthwith shall cancel the special fuel dealer's or special fuel user's license.

(j) Additional bond or deposit: The department may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in section 84-1831 (i), if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user, or the market value of the properties deposited as security by such special fuel dealer or special fuel user, shall become impaired or inadequate; and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within thirty (30) days after being requested so to do by the department, said department forthwith shall cancel his license.

(k) All special fuel taxes due from any dealer or user under the provisions of this act, together with all penalties and interest thereon shall be a lien upon any and all property of such dealer, user or other person upon the filing by the state department of revenue of a duplicate copy of the statement so made by the state department of revenue, or a certified copy of any statement filed by said department in the office of the county clerk of the county where such property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 236 and once by Ch. 270. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment inserted the second sentence in subsection (d) and, in the second paragraph of that subsection, substituted "five thousand dollars . . . any other special fuel user" for "five hundred dollars ($500.00), for a special fuel user."

Chapter 12, Laws of 1971, substituted section "84-1832.1" for "84-1932.1" in the second paragraph of subsection (d), thus

correcting the citation to a tax on certain special fuel users.

Chapter 277, Laws of 1971, added the third paragraph to subsection (a); added "unless otherwise provided herein" at the end of subsection (b); inserted "Except as herein provided" at the beginning of the first paragraph of subsection (d); inserted "resident" before "special fuel user" in the second sentence of the first paragraph of subsection (d); substituted "the tax as herein provided is not delinquent or that interest or penalties are not accrued" for "no tax, interest or penalties are accrued" in the second sentence of the first paragraph of subsection (d); and made minor changes in punctuation and style.

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section; and deleted "any member of the state board of equalization or" before "any authorized employee" near the end of the second paragraph of subsection (a).

Chapter 236, Laws of 1977, inserted the third paragraph of subsection (a), relating to privately operated passenger automobiles.

Chapter 270, Laws of 1977, rewrote the first sentence in the last paragraph of subsection (a) which read: "Any out of state user who operates a recreational passenger car, pickup truck or family motor coach powered by special fuels shall secure a special fuel user's 'Courtesy' vehicle permit."

Effective Dates

Section 3 of Ch. 12, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 2, 1971.

Section 2 of Ch. 236, Laws 1977 provided the act should be effective upon its passage and approval. Approved April 4, 1977.

Section 2 of Ch. 270, Laws 1977 provided the act should be effective upon its passage and approval. Approved April 5, 1977.

84-1834. Special fuel dealers' and special fuel users' records. (a) Preparation of records and inspection of: Every special fuel dealer, special fuel user and every person importing, manufacturing, refining, dealing in, transporting or storing, special fuel in this state, shall keep such records, receipts and invoices and other pertinent papers, with respect thereto as the department may require, and shall produce them for the inspection of the department at any time during the business hours of the day.

(b). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 162, L. 1955; amd. Sec. 2, Ch. 216, L. 1957; amd. Sec. 82, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" twice near the end of subsection (a).

84-1835. Returns and payments. (a) Returns: For the purpose of determining the amount of his liability for the tax herein imposed, each special fuel dealer and each special fuel user shall file with the department, on forms prescribed by said department, a monthly tax return.

Upon annual application the department shall waive the filing of a monthly tax return of any special fuel user who establishes that such user's annual tax liability is or will be $100 or less.

Such user shall make an annual report and return to the department, on forms prescribed by said department on or before the 25th day of January of each year hereafter. Should the department determine that a user filing annual returns as herein provided is delinquent in making reports and payments, it shall require such person to file monthly returns as herein provided. Such return, annual or monthly, shall contain a declaration by the person making the same, to the effect that the statements contained are true and are made under penalties of perjury, which dec-

larations shall have the same force and effect as a verification. The return shall show such information as the department may reasonably require for the proper administration and enforcement of this act; provided, however, that if a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle, and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly return to the department need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made. The special fuel dealer or special fuel user shall file the return on or before the twenty-fifth (25th) day of the next succeeding calendar month following the monthly period to which it relates; provided, however, that for good cause the department may grant a taxpayer a reasonable extension of time for filing, but not to exceed thirty (30) days.

Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail, shall be deemed filed and received by this state on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted, shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within thirty (30) days after written notification is given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

If any claim, statement, remittance or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States Post Office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was mailed to the addressee, and the date of registration, certification or certificate shall be deemed the postmarked date.

If the final filing date falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date or as provided in this chapter.

(b). * * * [Same as parent volume.]

(c) Payments: The monthly tax return shall be accompanied by remittance covering the tax due hereunder on account of the use as defined in 84-1831(f) of special fuels during the preceding month. A licensed special fuel dealer is allowed a deduction equal to 1% of the first 6 cents per gallon of the taxes paid by the dealer under 84-1832.1 as an allowance for shrinkage, spillage, and evaporation of special fuels and other losses beyond the dealer's control.

(d) Refusal or failure to file return or pay tax when due: In case of any special fuel dealer or special fuel user who refuses or fails to file a return required by this act within the time prescribed by subsection (a) of this section, there is hereby imposed a penalty of twenty-five dollars ($25) or a sum equal to twenty-five per cent (25%) of the tax due, whichever is greater, together with interest at the rate of one per cent (1%) on the tax due, for each calendar month or fraction thereof during which such refusal or failure continues; provided, however, that if any such special fuel dealer or special fuel user shall establish to the satisfaction of the department that his failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this subsection.

(e). * * * [Same as parent volume.]

(f) Deficiency: If it be determined by the department that the tax reported by any special fuel dealer or special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency interest at the rate of one per cent (1%) per month or fraction thereof from the date the return was due.

(g) Determination if no return made: If any special fuel dealer or special fuel user, whether or not he is licensed as such, fails, neglects, or refuses to file a special fuel tax return when due, the department shall, on the basis of information available, to it, determine the tax liability of the special fuel dealer or special fuel user for the period during which no return was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in subsection (d) above.

An assessment made by the department pursuant to this subsection or to subsection (f) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(h) Fraudulent return: If any special fuel dealer or special fuel user shall file a false or fraudulent return with intent to evade the tax imposed by this act, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five per cent (25%) of the deficiency together with interest at one per cent (1%) per month, or fraction thereof, on such deficiency from the date such tax was due to the date of payment, in addition to all other penalties prescribed by law.

(i). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 258 and once by Ch. 377. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 52, Laws of 1969, substituted "twenty-five dollars ($25)" for "one hundred dollars ($100)" after "there is hereby imposed" in subsection (d).

Chapter 61, Laws of 1969, inserted in subsection (a) the language now appearing in the fourth and fifth paragraphs and a final paragraph reading: "Upon annual application the board may waive the filing

of a monthly tax return of any special fuel user who establishes to the reasonable satisfaction of the board that no tax, interest or penalties are accrued under the provisions of this act."

The 1971 amendment inserted in subsection (a) the second paragraph and the first and second sentences of the third paragraph; inserted "annual or monthly" after "such return" at the beginning of the third sentence of the third paragraph of subsection (a); deleted from subsection (a) the final paragraph added by Ch. 61, Laws of 1969; and made minor changes in punctuation and style.

The 1973 amendment substituted "department" for "board" throughout the section.

Chapter 258, Laws of 1977, added the second sentence of subsection (c).

Chapter 377, Laws of 1977, substituted "annual" in the second paragraph of subsection (a) for "monthly"; and substituted "$100" in the second paragraph of subsection (a) for "ten dollars ($10)."

Effective Dates

Section 2 of Ch. 52, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

Section 6 of Ch. 277, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 10, 1971.

Repealing Clause

Section 5 of Ch. 277, Laws 1971 repealed all acts and parts of acts in conflict therewith.

84-1836. Credits. Any licensed special fuel user or licensed special fuel dealer who has paid a special fuel tax either directly or to the vendor from whom it was purchased, shall receive credit in the amount of any tax paid on special fuel exported for use outside of this state, or for any use off the public roads and highways of this state, or for any overpayment of special fuel taxes not due to the state. Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state.

Any licensed special fuel user who purchases a temporary special fuel permit, and thereafter applies for a special fuel vehicle permit for the same vehicle in less than eleven (11) days after the temporary permit is issued, shall receive credit in the amount of the temporary permit fee.

History: En. Sec. 7, Ch. 162, L. 1955; amd. Sec. 1, Ch. 104, L. 1967.

Amendments

The 1967 amendment substituted "licensed special fuel user or licensed special fuel dealer" for "person" near the beginning of the first paragraph; added "or for any use * * * to the state" at the end of the first sentence of the first paragraph; and added the second paragraph.

84-1837. Procedures for credits. Should a licensed special fuel user or licensed special fuel dealer desire to receive refund of special fuel taxes or of the temporary permit fee, the user or dealer shall make a signed and written request to the department requesting those amounts then due. Any amount determined to be creditable by the department under section 84-1836 shall first be credited on any amounts then due and payable from the special fuel dealer or special fuel user to whom the refund is due, and the department shall then certify the balance to the credit of the dealer or user, and a warrant shall be drawn upon the state treasurer for the amount of such claim and same shall be paid in the same manner as other claims against the state are paid.

Provided however, in case any special fuel user or special fuel dealer fails or neglects to file a request for refund of special fuel taxes within twelve (12) months from the date his special fuel license became canceled, the department shall be under no obligation to make a refund.

History: En. Sec. 8, Ch. 162, L. 1955; amd. Sec. 2, Ch. 104, L. 1967; amd. Sec. 84, Ch. 516, L. 1973.

Amendments

The 1967 amendment inserted the first sentence of the first paragraph; added "and a warrant shall be * * * claims against the state are paid" at the end of the first paragraph; and added the second paragraph.

The 1973 amendment substituted "department" for "board" in four places.

84-1838. Administrative powers. (1) The department shall enforce the provisions of this act, and may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement thereof.

(2) The department or its authorized representative is hereby empowered to examine the books, papers, records, and equipment of any special fuel dealer or special fuel user or any person dealing in, transporting, or storing special fuel, as defined in this act and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records, and equipment are not maintained in this state at the time of demand, they shall be furnished to the department for review and shall be accompanied by the special fuel dealer or special fuel user or such dealer or user shall bear the reasonable cost of examination by an agent authorized or designated by the department at the place where such books or records are kept, provided the taxpayer shall not be liable for such costs for a period exceeding 1 week or for such longer period as he may consent to in writing, unless the result of said examination is the payment of a tax deficiency.

(3) For the purpose of enforcing the provisions of this act, the fact that a special fuel dealer or a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles shall be prima facie evidence that all of such special fuel has been delivered by the special fuel dealer or special fuel user into the fuel supply tanks of motor vehicles and consumed in the propulsion of motor vehicles upon the highways as herein defined unless the contrary shall be established by satisfactory evidence.

(4) The department shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, or the provinces of the Dominion of Canada, forward to such officials any information which it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel dealer or special fuel user, provided such other state or states furnish like information to this state.

History: En. Sec. 9, Ch. 162, L. 1955; amd. Sec. 1, Ch. 106, L. 1967; amd. Sec. 85, Ch. 516, L. 1973; amd. Sec. 2, Ch. 34, L. 1977.

Amendments

The 1967 amendment inserted "and shall be accompanied by the special fuel dealer or special fuel user" after "review" in the second sentence of subsection (b).

The 1973 amendment substituted "department" for "board" throughout the section.

The 1977 amendment redesignated subsections (a) through (d) as subsections (1) through (4); deleted "and regulations" after "rules" in subsection (1); and made minor changes in phraseology, punctuation and style.

84-1840. Disposition of funds. All taxes, interest, and penalties collected under this chapter or chapter 63 of this title shall be turned over promptly to the state treasurer, who shall place the same in the earmarked revenue fund to the credit of the department of highways, except those funds hereinbelow allocated to cities, towns and counties, which funds shall be paid by the state treasurer directly to such cities, towns, and counties.

(1) $6,500,000 of the funds collected under this act shall be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (a) and (b) hereof:

(a) $2,950,000 shall be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

(b) $3,550,000 shall be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities, and towns shall be used exclusively for the construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys, or for the share which such city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system or urban extensions thereto.

(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities, and towns, shall inform the department of highways of the purposes for which the funds will be expended so that the county commissioners, the governing body, and the department of highways may coordinate the expenditure of public funds for road improvements.

(4) All funds hereby allocated to counties, cities, and towns shall be disbursed to the lowest responsible bidder according to applicable bidding

procedures followed in all cases where the contract for construction, reconstruction, maintenance or repair is in excess of $4,000.

(5) For the purposes of this section where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(6) For the purposes of this section where determination of mileage is necessary for distribution of funds it shall be the responsibility of the cities, towns, and counties to furnish to the department of highways and state treasurer a yearly certified statement indicating the total mileage within their respective areas applicable to this act. All mileage submitted shall be subject to review and approval by the department of highways.

(7) None of the funds authorized by this section shall be used for the purchase of capital equipment.

History: En. Sec. 11, Ch. 162, L. 1955; amd. Sec. 213, Ch. 147, L. 1963; amd. Sec. 2, Ch. 6, Ex. L. 1967; amd. Sec. 2, Ch. 355, L. 1969; amd. Sec. 1, Ch. 384, L. 1971; amd. Sec. 1, Ch. 338, L. 1973; amd. Sec. 1, Ch. 330, L. 1974; amd. Sec. 1, Ch. 30, L. 1975; amd. Sec. 2, Ch. 514, L. 1975; amd. Sec. 3, Ch. 34, L. 1977.

Compiler's Notes

Section 7, Ch. 473, Laws of 1975 provided: "If House Bill No. 198 and this bill are each enacted into law in 1975, it is the intent of the legislature that section 2 of this act controls the taxation of liquid petroleum gas under section 84-1832.1." House Bill No. 198 was enacted and is in section 84-1840.

Amendments

The 1967 amendment added subdivisions (1) through (7).

The 1969 amendment substituted "The lesser of the following amounts" at the beginning of subdivision (1) for "One million five hundred thousand dollars ($1,500,000)"; inserted "maintenance" after "reconstruction" in the first paragraph of subdivision (1); inserted at the end of the first paragraph of subdivision (1) clauses reading "(i) Three million dollars ($3,000,000) or (ii) Sixty-six per cent (66%) of the amount of state matching funds saved under the provisions of clause B of section 120 (a) of Title 23, United States Code, but not less than one million five hundred thousand dollars ($1,500,000)"; inserted after clauses (i) and (ii) in subdivision (1) a paragraph reading "In any fiscal year when the amount of funds allocated to the counties and incorporated cities and towns under subsection (1) (ii) does not equal three million dollars ($3,000,000) the difference between the three million dollars ($3,000,000) and the funds allocated for that year shall carry forward and be allocated to the counties and incorporated cities and towns in subsequent fiscal years"; substituted "Forty per cent (40%)" at the beginning of subdivision (1)(a) for "Six hundred thousand dollars ($600,000)"; substituted "Sixty per cent (60%)" at the beginning of subdivision (1)(b) for "Nine hundred thousand dollars ($900,000)"; inserted "exclusive of the federal-aid interstate system and the federal-aid primary system" in two places in subdivision (1)(b)(ii); inserted "maintenance" after "reconstruction" in subdivisions (2) and (4); added "with the exception that five per cent (5%) of the funds allocated each fiscal year to any county, incorporated city and town or seven thousand five hundred dollars ($7,500), whichever amount is greater, may be expended for maintenance of rural roads and city or town streets without being submitted to bid" to the end of subdivision (4); added subdivision (8); and made minor changes in phraseology.

The 1971 amendment added the proviso to subdivision (2); substituted the exception at the end of subdivision (4) for the language added by the 1969 amendment; and deleted from subdivision (8) a second sentence reading "Section 2(b), effective July 1, 1971, the total amount of funds allocated each fiscal year in section 2 (a)(1) to the counties and incorporated cities and towns shall reduce to one million five hundred thousand dollars ($1,500,000)."

The 1973 amendment substituted "Three million dollars ($3,000,000)" at the beginning of subdivision (1) for the language substituted there by the 1969 amendment; deleted the clauses (i) and (ii) and the paragraph inserted in subdivision (1) by the 1969 amendment; substituted "One million two hundred thousand dollars ($1,200,000)" at the beginning of subdivision (1)(a) for "Forty per cent (40%)"; substituted "One million eight hundred thousand dollars ($1,800,000)" at the beginning of subdivision (1)(b) for "Sixty per cent (60%)"; increased from 10% to 50% the portion of allocated funds expendable for maintenance and repairs authorized by the

proviso to subdivision (2); and made minor changes in phraseology.

The 1974 amendment substituted "department of highways" for "state highway department" and added the exception at the end of the first sentence of the section; deleted the proviso added at the end of subsection (2) in 1971 which read: "provided that not more than fifty per cent (50%) or one thousand dollars ($1,000), whichever amount is greater, of the funds allocated each fiscal year, beginning with the fiscal year starting July 1, 1971, to any county, incorporated city and town may be expended for maintenance and repair of rural roads of city or town streets"; rewrote subdivision (3) which read: "Upon receipt of the allocation provided herein, the county commissioners, in the case of counties, or the governing body, in the case of incorporated cities or towns, shall propose the expenditure of said funds to the state highway commission. The commission may consult with the county commissioners or the governing body proposing expenditures before approving the same provided, however, that before any contract for the expenditure of funds provided herein shall be let, an agreement covering the same shall be executed by both the proposing body and the state highway commission"; rewrote subdivision (4) which read: "All construction, reconstruction, maintenance and repair authorized herein shall be pursuant to the design and subject to the supervision of the state highway commission, and all funds hereby allocated to counties, cities and towns shall be disbursed by the state highway commission to the lowest responsible bidder according to the bidding procedures specified in chapter 41, Title 32 of this code except that not more than seven thousand five hundred dollars ($7,500) of the funds allocated each fiscal year to any county, incorporated city and town may be expended without being submitted to bids"; deleted subdivision (5) which read: "The state highway commission shall make and establish such rules and regulations as may be necessary to carry out the intent of the act and shall keep records of the funds allocated to each city or town, and the subsequent expenditure of said funds"; redesignated subdivisions (6), (7), and (8) as subdivisions (5), (6), and (7); substituted "furnish to the department of highways and state treasurer" for "furnish to the state highway commission" in the first sentence of subdivision (6); and substituted "department of highways" for "state highway commission" at the end of subdivision (6).

Chapter 30, Laws of 1975 inserted "on a monthly basis" in subdivision (1).

Chapter 514, Laws of 1975 increased the amount specified in subdivision (1) from $3,000,000 to $6,500,000; in subdivision (1)(a) from $1,200,000 to $2,950,000; and in subdivision (1)(b) from $1,800,000 to $3,550,000.

The 1977 amendment substituted "this chapter or chapter 63 of this title" for "this act" in the first paragraph; and made minor changes in phraseology, punctuation and style.

Repealing Clauses

Section 3 of Ch. 6, Ex. Laws 1967 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 355, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 384, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Separability Clauses

Section 4 of Ch. 6, Ex. Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Section 4 of Ch. 355, Laws 1969 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Section 2 of Ch. 384, Laws 1971 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases, or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Allocation of Overhead Costs

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate proportionate share of costs among the various city departments using the facility. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

Funds from Sources other than Gasoline Tax

Prohibition against expenditure of gasoline tax revenues for nonhighway purposes has no application to street funds derived from other sources; thus proceeds of levy under another statute could be committed to finance proportionate share of construction costs of city shop complex to be used by various city departments. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

84-1840.1. Allocation of funds—participation in railroad grade crossing protection on public highways, roads or streets, other than those designated on the interstate, primary or urban system. The sum of one hundred thousand dollars ($100,000) may be allocated from the earmarked revenue fund, state highway account for the fiscal year ending June 30, 1973, and so much for each succeeding fiscal year as may be necessary to reimburse the fund for expenditures and commitments made and to maintain the fund at one hundred thousand dollars ($100,000) at the beginning of each fiscal year thereafter, for participation by the department of highways with railroads in construction of railroad grade crossing protection on any public highway or road, except those designated on the interstate, primary or urban systems, within the state of Montana. The department of highways shall select those grade crossings in the state which in the opinion of the department are most in need of additional crossing protection and shall finance the cost thereof solely from this fund. Signal protection provided under the fund shall be limited to electric or automatic flashing lights or gates depending on the amount and nature of the hazards present at the crossing and participation in construction of such signals shall be on the same basis and under the same standards as are applicable and used in connection with protection of grade crossings on federal-aid roads within the state, provided, however, the fund shall not be used for protection of grade crossings on the secondary system where the protection is considered necessary and the cost thereof is financed in part with federal-aid highway funds. In addition to the funds allocated, counties and cities may authorize the use of funds available to said counties and cities under the provisions of section 84-1840 for participation of installation in grade crossing protection within the county or city.

History: En. 84-1840.1 by Sec. 1, Ch. 399, L. 1973.

Title of Act

An act to amend Title 84, chapter 18, R. C. M. 1947, by adding a new section designated 84-1010.1, R. C. M. 1947, allocating funds to be used by the department of highways for the participation with railroads for erection of railroad grade crossing protection on roads and streets except those on the interstate, primary or urban systems; providing for reimbursement of the fund at the beginning of each fiscal year; providing that the department of highways shall select the crossings to be protected and that participation be on the same basis as applicable on federal-aid roads; authorizing counties and cities to use funds allocated to them from gasoline tax money for participation in grade crossing protection; repealing all acts and parts of acts in conflict herewith, provided, however, that sections 72-164 to 72-168, R. C. M. 1947, inclusive are not repealed; and providing that this act shall be effective on passage and approval.

Repealing Clause

Section 2 of Ch. 399, Laws 1973 read "All acts and parts of acts in conflict herewith are hereby repealed, provided, however, that sections 72-164 to 72-168 inclusive are not repealed."

Effective Date

Section 3 of Ch. 399, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 21, 1973.

84-1841. Judicial review and appeals. Any final written determination by the director of the department under this chapter or chapter 63 may be appealed to the state tax appeal board which may, upon the record of a hearing, affirm, modify, or reverse the decision of the department. Any party aggrieved by the decision of the board may petition for judicial review by the district court of Lewis and Clark County, and an appeal may be taken from the judgment of the district court to the supreme court.

History: En. Sec. 12, Ch. 162, L. 1955; amd. Sec. 86, Ch. 516, L. 1973; amd. Sec. 5, Ch. 155, L. 1977.

Amendments

The 1973 amendment substituted "department" for "board."

The 1977 amendment rewrote this section which read "Any determination of the department hereunder may be reviewed by the district court of Lewis and Clark county, and an appeal may be taken from the judgment of said district court to the supreme court."

84-1842. Special fuel user's temporary trip permits—nonresident agricultural harvesting equipment special fuel permit—agents by whom issued. (1) Any person operating a special fuel-powered vehicle upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by section 84-1833, shall be required to purchase a special fuel user's temporary trip permit. The permits will be issued by scale house personnel, gross vehicle weight (g.v.w.) patrol crews, Montana highway patrolmen, and such other enforcing agents as the department of revenue may prescribe by order, rule or regulation.

(2) Any nonresident upon entering the state of Montana with agricultural harvesting equipment powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by section 84-1833, shall be required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit will be issued by scale house personnel, gross vehicle weight (g.v.w.) patrol crews, Montana highway patrolmen and such other enforcing agents as department of revenue may prescribe by order, rule or regulation.

History: En. Sec. 1, Ch. 200, L. 1961; amd. Sec. 1, Ch. 105, L. 1967; amd. Sec. 87, Ch. 516, L. 1973; amd. Sec. 1, Ch. 440, L. 1975.

Amendments

The 1967 amendment substituted the present first sentence of the section for a former first sentence which read "A temporary permit shall be issued to all unlicensed users of all special fuel vehicles operating within the state of Montana."

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of subsection (1).

The 1975 amendment inserted the subsection (1) designation; and added subsection (2).

84-1843. Fees for temporary permits—time of expiration—disposition of fees—forms. (1) The temporary special fuel permits shall cost the special fuel vehicle user a fee of twenty dollars ($20.00); said permit shall be valid for a period of time not to exceed seventy-two (72) hours and will be automatically void should said vehicle leave the state of Montana during the seventy-two (72) hour period. All fees collected will be remitted to the state department of revenue. Special fuel temporary permits, remittance forms and any other necessary papers for the accounting and enforcement of this act shall be furnished by the state department of revenue.

(2) A temporary special fuel permit for a nonresident operating agricultural harvesting equipment shall cost thirty dollars ($30) per unit for a period beginning July 1 and ending October 31. The permit shall not be transferable. A unit shall be defined as:

(a) One (1) truck suitable for hauling produce, and

(b) One (1) harvesting machine, and

(c) Pick-up trucks and any other accessory vehicles. All fees collected shall be remitted to the department of revenue. Nonresident temporary permits, remittance forms and any other necessary papers for the accounting and enforcement of this act shall be furnished by the department of revenue.

History: En. Sec. 2, Ch. 200, L. 1961; amd. Sec. 88, Ch. 516, L. 1973; amd. Sec. 2, Ch. 440, L. 1975.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the second and third sentences.

The 1975 amendment inserted the subsection (1) designation; and added subsection (2).

84-1844. Penalty for operation without temporary permit—compliance bonds. Any unlicensed user of special fuel vehicles operating within the state of Montana, without making application for said temporary permit, and paying the specified fee, shall be guilty of committing a misdemeanor and upon conviction, be fined fifty dollars ($50.00). Nothing contained herein shall affect the existing policy of accepting a compliance bond to be retained for use by the state department of revenue and to be imposed at the discretion of the enforcing agency.

History: En. Sec. 3, Ch. 200, L. 1961; amd. Sec. 89, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1845. Short title. This act may be cited as the "Distributor's Gasoline License Tax Act."

History: En. Sec. 1, Ch. 369, L. 1969.

Title of Act

An act providing for the amount of the distributor's gasoline license tax; payment of the tax by distributors; establishing a refund procedure; licensing of gasoline distributors; empowering the state board of equalization to establish regulations; providing for enforcement of the act by penalties; and repealing sections 84-1801 through 84-1814, 84-1818 through 84-1823, 84-1828, and 84-1829, R. C. M. 1947, relating to the gasoline dealer's license tax.

84-1846. Definitions. As used in this act, the following definitions shall apply:

(1) The term "gasoline" includes all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation gasoline and all flammable liquids, composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. The term "gasoline" does not include special fuels as defined in section 84-1831 (e).

(2) The word "person" means any person, firm, association, joint-stock company, syndicate or corporation.

(3) The words "motor vehicle" mean all vehicles operated or propelled upon the public highways or streets of this state, in whole or in part by the combustion of gasoline.

(4) The word "use" shall include and mean the operation of motor vehicles upon the public roads or highways of the state of Montana, or of any political subdivision thereof.

(5) The word "import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of Montana of any gasoline shipped or transported into this state from point of origin without this state, other than in the fuel supply tank of a motor vehicle.

(6) Gasoline deemed to be "distributed." (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat, or gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks thereat, or gasoline imported into this state and placed in storage at refineries or pipeline terminals, shall be deemed to be distributed, for the purpose of this act, at the time the gasoline is withdrawn from such tanks, refinery or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from such tanks, refinery or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state other than that gasoline placed in storage at refineries or pipeline terminals, shall be deemed to be distributed after it has arrived in and is brought to rest in this state.

(7) The word "distributor" means

(a) any person who engages in the business in this state of producing, refining, manufacturing or compounding gasoline for sale, use or distribution,

(b) any person who imports gasoline for sale, use or distribution,

(c) any dealer licensed as of January 1, 1969, except a dealer at an established airport.

(8) The words "aviation gasoline" mean gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(9) "Aviation dealer" means any person in this state engaged in the business of selling aviation gasoline either from a wholesale or retail outlet on which the license tax has been paid to a licensed distributor as herein provided for.

History: En. Sec. 2, Ch. 369, L. 1969; amd. Sec. 1, Ch. 13, L. 1971; amd. Sec. 1, Ch. 204, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 13 and once by Ch. 204. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the changes made by the two acts do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendatory acts.

Amendments

Chapter 13, Laws of 1971, deleted from the end of paragraph (7)(b) a provision reading, "and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the state aeronautics commission by section 1-501."

Chapter 204, Laws of 1971, added subdivision (9) and made minor changes in style.

84-1847. Gasoline license tax—amount. Every distributor shall pay to the state department of revenue a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to one cent (1¢) for each gallon of aviation gasoline, which shall be allocated to the aeronautics commission, as provided by section 1-501, R.C.M. 1947, as amended, and 8 cents for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor. Gasoline exported or sold for export out of the state of Montana shall not be included in the measure of the distributor's license tax.

History: En. Sec. 3, Ch. 369, L. 1969; amd. Sec. 1, Ch. 202, L. 1971; amd. Sec. 2, Ch. 204, L. 1971; amd. Sec. 90, Ch. 516, L. 1973; amd. Sec. 3, Ch. 514, L. 1975; amd. Sec. 5, Ch. 390, L. 1977.

Amendments

Chapter 202, Laws of 1971 increased the tax from six and one-half cents to seven cents per gallon.

Chapter 204, Laws of 1971, included the change made by Ch. 202; reduced the tax on aviation gasoline to one cent; and inserted the clause providing for allocation to the aeronautics commission.

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

The 1975 amendment substituted "and seven and three-quarters cents ($.07¾)" for "and seven cents ($.07)" in the middle of the section.

The 1977 amendment increased the amount of tax on gasoline other than aviation from seven and three-quarters cents to eight cents per gallon.

Temporary Provisions

Chapter 406, Laws 1975 read "There is hereby levied and imposed as a temporary measure a tax on the use of special fuel and a license tax on the privilege of engaging in and carrying on business of distributing gasoline excluding aviation gasoline as defined in section 84-1846 (8); said tax shall be in addition to those already imposed by sections 84-1832.1 and 84-1847, R. C. M. 1947, and shall be in the amount of one and one-half cents (1½¢) per gallon on each gallon of special fuel and gasoline excluding aviation gasoline. Such tax shall be levied and imposed by the department of revenue not later than ninety (90) days after certification by the governor to the department that the imposition of such tax is necessary in order that the state of Montana obtain full benefits under the provisions of the Federal-Aid Highway Act and all acts amendatory thereto. Any tax levied and imposed pursuant to this section shall expire on June 30, 1977." Approved April 14, 1975.

Effective Date

Section 2 of Ch. 202, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

84-1848. Repealed.

Repeal

Section 84-1848 (Sec. 4, Ch. 369, L. 1969), relating to aviation gasoline tax exemption certificates, was repealed by Sec. 3, Ch. 204, Laws 1971.

84-1849. Distributors' statements—payment of the tax. Each distributor shall, not later than the twenty-fifth day of each calendar month render a true statement to the state department of revenue, duly signed, of all gasoline distributed and received by him in this state during the preceding calendar month, and containing such other information as the state department of revenue may reasonably require in order to administer the gasoline license tax law. The statement shall be accompanied by a payment in an amount equal to the tax imposed by section 3 (84-1847) of this act, less any refund credit issued under section 11 (84-1855) of this act, and less two per cent (2%) of the first six cents (6¢) tax which shall be deducted by the distributor as an allowance for evaporation and other loss of gasoline distributed by such distributor; provided, however,

that no such allowance shall be deducted from the one cent (1¢) tax on aviation gasoline.

Any distributor engaged in or carrying on his business at more than one (1) place or location in this state may include all such places of business in one (1) statement.

History: En. Sec. 5, Ch. 369, L. 1969; amd. Sec. 4, Ch. 204, L. 1971; amd. Sec. 91, Ch. 516, L. 1973.

Amendments

The 1971 amendment substituted the proviso at the end of the first paragraph for a separate sentence reading "In addition a distributor may deduct for each gallon of aviation gasoline sold by him and for which he submits a valid gasoline tax exemption certificate, an amount equal to the tax per gallon except the portion thereof allocated to the state aeronautics commission by section 1-501"; and made minor changes in style.

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle and end of the first sentence of the first paragraph.

84-1850. Examination of records. The department, or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any gasoline distributor or any person dealing in, transporting, or storing gasoline as defined in this act and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and equipment are not maintained in this state at the time of demand they shall be furnished to the department for review or such dealer shall bear the reasonable cost of examination by an agent authorized or designated by the department at the place where such books or records are kept, provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may consent to in writing, unless the result of such examination is the payment of a tax deficiency.

History: En. Sec. 6, Ch. 369, L. 1969; amd. Sec. 92, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

84-1851. Records to be kept. Each distributor or any other person dealing in, transporting, receiving or storing gasoline shall keep for a period not to exceed three (3) years such records, receipts and invoices and any other pertinent papers and information as the state department of revenue may require.

History: En. Sec. 7, Ch. 369, L. 1969; amd. Sec. 5, Ch. 204, L. 1971; amd. Sec. 93, Ch. 516, L. 1973.

Amendments

The 1971 amendment inserted "or any other person dealing in, transporting, receiving or storing gasoline."

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1852. Inspection of records. The records, receipts and invoices and any other pertinent papers supporting sales of every distributor or any person dealing in, transporting or storing gasoline shall be open and subject to inspection by the state department of revenue or any of its employees or assistants during business hours in order to ascertain the amount of license tax due.

History: En. Sec. 8, Ch. 369, L. 1969; amd. Sec. 94, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1853. Invoice of distributors and aviation dealers. Each distributor and aviation dealer in this state shall at the time of delivery, except where authorized by the department, issue to the purchaser an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and such other information as the state department of revenue may require.

History: En. Sec. 9, Ch. 369, L. 1969; amd. Sec. 6, Ch. 204, L. 1971; amd. Sec. 95, Ch. 516, L. 1973.

Amendments

The 1971 amendment inserted "and aviation dealer."

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization near the middle and end of the section.

84-1854. Information reports. Any person receiving gasoline, including every common carrier, private carrier and contract carrier of property who shall haul, receive, transport, or ship any gasoline, from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the department of revenue upon its request and within the time specified a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of such products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee and the date of delivery to the consignee.

In case of any person, except licensed distributors, who refuses or fails to file a statement as herein provided for, there is hereby imposed a penalty of twenty-five dollars ($25) for each failure or refusal, provided, however, that if any person shall establish to the satisfaction of the department that his failure to file a statement as prescribed by the department was due to reasonable cause, the department shall waive the penalty.

History: En. Sec. 10, Ch. 369, L. 1969; amd. Sec. 96, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in four places.

84-1855. Refund of gasoline license tax—procedure. (1) Any person who shall purchase and use any gasoline, on which the Montana gasoline license tax has been paid, for operating or propelling stationary gasoline engines, tractors used off the public highways and streets, motorboats, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, shall be allowed a refund of the amount of tax paid directly or indirectly on the

gasoline so used. Provided, that such refund or drawback should in no instance exceed the tax paid or to be paid, to the state of Montana [, and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the board of aeronautics by section 1-501, R. C. M. 1947].

Any distributor paying the gasoline license tax to this state erroneously shall be allowed a credit or refund of the amount of tax so paid.

(2) The application for refund shall be a signed statement on a form furnished by the department, accompanied by the original invoice or invoices issued to the claimant at the time of purchase and delivery, showing the total amount of gasoline purchased, the total amount of gasoline on which a refund is claimed, and the amount of the tax claimed for refund. Such further information pertaining to such claim shall be furnished as required by the department, provided that gallons of gasoline used off the roadways, where not verifiable by records of actual use, may be estimated by the applicant according to the following schedule:

(a) on the first one thousand (1,000) gallons of gasoline purchased, or any part thereof, forty-five per cent (45%) of gasoline purchased.

(b) on the next one thousand (1,000) gallons of gasoline purchased, or any part thereof, sixty per cent (60%) of gasoline purchased.

(c) on the next one thousand (1,000) gallons of gasoline purchased, or any part thereof, sixty-five per cent (65%) of gasoline purchased.

(d) on any gasoline purchased in excess of three thousand (3,000) gallons, seventy per cent (70%) of gasoline purchased.

If any invoice is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be required by the department.

(3) Any applicant who does not elect to estimate the off-highway use of gasoline according to the schedule in subsection (2) shall maintain records as provided for in this subsection.

(a) Highway and off-highway use of gasoline from common storage. Gasoline purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detail withdrawal records to accurately show the manner in which used. Gasoline on hand, determined by actual measurement, shall be deducted from a claim and shall be reported as an opening inventory on the next claim. Credit for the inventory is allowed on the next claim if filed within fourteen (14) months from the filing date of the claim which established the inventory.

(b) Highway and off-highway use of gasoline from separate storage. If separate storage tanks are maintained for highway use and off-highway use, the bulk purchase invoices shall be so marked by the dealer at the time of delivery. No further record is required, provided that no gasoline is withdrawn from the off-highway tank for licensed vehicles. Withdrawal of gasoline from the off-highway tank for licensed vehicles will invalidate this method of determining refundable gallonage.

(c) Use of gasoline from restricted use storage. Special storage facilities in the woods, or in farm fields, or for other uses for certain

periods, must be identified and explained. If such storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into such storage.

(d) Gasoline purchased for other than bulk storage. Fuel purchased in small containers for nonhighway use must be identified on the purchase invoice and no further record is required.

(e) Resellers. Service stations, bulk dealers and marinas must prepare a separate and complete invoice for each withdrawal of gasoline for own use upon which a refund is to be claimed.

(f) Proof of highway use. When no highway use of gasoline is deducted from the claim, the applicant must substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the department.

(g) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the gasoline used to operate the vehicle on roads or property in private ownership, if such person has maintained the following records:

(i) the total number of highway miles operated by each licensed motor vehicle, including private passenger cars;

(ii) total gallons of gasoline used in each vehicle to include both refund and nonrefund use;

(iii) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels purchased at service stations or received from other sources. Highway use for each vehicle may be determined by actual measurement, or may be computed by dividing the average miles per gallon highway operation consumption rate into the number of highway miles operated.

(4) All applications for refunds shall be filed with the department of revenue within fourteen (14) months after the date on which the gasoline was purchased as shown by invoices or after the date on which the tax was erroneously paid. Provided, however, that a distributor may file a claim for refund of taxes erroneously paid within three (3) years after the date of such erroneous payment. The department shall have one hundred twenty (120) days after receiving the claim to approve or reject it. If approved, the department shall issue a credit in lieu of refund for the amount of the claim, if the claimant is a distributor. For all other persons, a warrant shall be drawn upon the state treasurer for the amount of the claim.

(5) Should the department of revenue find that the statement contains errors which are not fraudulently inserted, it may correct the statement and approve it as corrected, or the department may require the claimant to file an amended statement. If the state department of revenue determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department may reject such claim in full. If a

claim is rejected, the department may suspend claimant's right to refund for a period not to exceed one (1) year.

(6) Any person, other than a licensed distributor, shall obtain a license from the state department of revenue prior to selling gasoline on which a refund may be claimed. The application for license shall contain the applicant's name, address, place or places of business in the state of Montana, and other information which may be required by the department. Licenses issued shall bear a license number and the date of issuance. The department shall keep a record of all licenses issued, canceled, or suspended. A nontransferable license shall be issued for three (3) years upon payment of a fee of three dollars ($3). Licenses must be renewed and the fee paid every three (3) years from date of issuance.

Any person failing to comply with this subsection shall be subject to a fine of not less than twenty-five dollars ($25) or more than two hundred dollars ($200) or imprisonment in the county jail for a period not less than ten (10) days or more than sixty (60) days, or both fine and imprisonment.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974.

Amendments

Chapter 13, Laws of 1971, added at the end of the first paragraph of subsection (1) the language enclosed in brackets.

Chapter 204, Laws of 1971, deleted "airplanes or aircraft" from the first sentence of the first paragraph of subsection (1); and deleted from the end of the first paragraph of subsection (1) a clause reading "and no refund shall be allowed on any sale with respect to which an aviation gasoline tax exemption certificate has been issued."

Chapter 400, Laws of 1971, inserted "the total amount of gasoline purchased" in the first sentence of the third paragraph of subsection (1); deleted "and the reason" following "gasoline on which a refund is claimed" in the first sentence of the third paragraph of subsection (1); added the proviso to the second sentence of the third paragraph of subsection (1); inserted the third and fourth sentences in the third paragraph of subsection (1); deleted from the third paragraph of subsection (1) a sentence reading: "Each separate delivery shall constitute a purchase"; extended the time for filing applications, as set forth in the first sentence of subsection (2) from 13 to 14 months after the date of purchase or tax payment; and made minor changes in phraseology and punctuation.

Chapter 200, Laws of 1973, substituted "board of aeronautics" for "state aeronautics commission" at the end of the first paragraph of subsection (1); divided former subsection (1) into subsections (1) and (2); substituted references to the department of revenue for references to the state board of equalization throughout the section; inserted "original" and "at the time of the purchase and delivery" in the first sentence of subsection (2); substituted the proviso and new subdivisions (a) through (d) for the end of the second sentence in subsection (2) and the third, fourth and fifth sentences of that paragraph; inserted subsection (3); renumbered former subsection (2) as (4); inserted the third sentence in subsection (4); renumbered former subsection (3) as (5); deleted former subsections (4) and (5); and substituted "license" for "permit" throughout subsection (6).

Chapter 516, Laws of 1973, substituted references to the department of revenue for references to the state board of equalization throughout the section.

The 1974 amendment deleted from subdivision (4) a third sentence reading "Except in the case of a claim for refund of taxes erroneously paid by a distributor, no claimant may make more than one (1) application for refund during any calendar year"; and substituted the fifth and sixth sentences of subdivision (6) for "Licenses shall be issued for the calendar year upon payment of a fee of one dollar ($1) and must be renewed annually before the first day of January."

Effective Dates

Section 3 of Ch. 13, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 2, 1971.

Section 2 of Ch. 200, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 7, 1973.

Section 2 of Ch. 80, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 4, 1974.

DECISIONS UNDER FORMER LAW

Motorboat Fuel

Under prior law which did not provide for tax refund for gasoline used in motorboats, one who consumed gasoline in motorboat in off-highway use was not entitled to refund on basis of due process and equal protection clauses of constitution, since dealer, rather than the consumer, is the taxpayer, and since consumer, as a boat user, was not proper party to represent all nonhighway users. Harvey v. Blewett, 151 M 427, 443 P 2d 902.

84-1855.1. Unlawful use of aviation gasoline. It shall be unlawful for any person to use aviation gasoline, or to sell such gasoline for use, in any motorized vehicle operated upon the public highways or streets of this state. Violation of this section shall be a misdemeanor subject to the penalties provided in section 84-1859, R. C. M. 1947.

History: En. Sec. 84-1855.1 by Sec. 8, Ch. 204, L. 1971.

Title of Act

An act providing simplified administrative procedures in the taxation of aviation gasoline for allocation to the aeronautics commission by subjecting such gasoline to a one cent (1¢) per gallon tax rather than the present seven cents (7¢) and by allowing no deduction, refund, or exemption from the tax; deleting aviation gasoline from those provisions of the gasoline license tax laws which provide evaporation allowances and credit refunds; providing a definition of "aviation dealer"; providing a new section numbered 84-1855.1, R. C. M. 1947, imposing a penalty; amending sections 84-1846, 84-1847, 84-1849, 84-1851, 84-1853 and 84-1855, R. C. M. 1947; repealing section 84-1848, R. C. M. 1947, pertaining to aviation gasoline tax exemption certificates.

Repealing Clause

Section 3 of Ch. 204, Laws 1971 read "Section 84-1848, R. C. M. 1947, is hereby repealed in its entirety."

84-1856. Timely mailing treated as timely filing and paying. Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail, shall be deemed filed and received by this state on the date shown by the post-office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance, or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted, shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within thirty (30) days after written notification is given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

If any claim, statement, remittance, or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States post office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was mailed to the addressee, and the date of registration, certification or certificate shall be deemed the postmarked date.

If the date for filing any claim, statement, remittance, or other document falls upon a Saturday, Sunday or legal holiday, the filing shall be considered timely if done on the next business day.

History: En. Sec. 12, Ch. 369, L. 1969.

84-1857. License and bond of gasoline distributors. All gasoline distributors prior to the commencement of doing business shall file an application for a license with the state department of revenue on forms prescribed and furnished by the department setting forth the information as may be requested by the department. Each distributor shall at the same time file a corporate surety bond or such collateral security or indemnity as may be deemed sufficient by the state department of revenue, but in no case more than twice the estimated amount of gasoline taxes the distributor will pay to this state each month. Upon approval of the application, the state department of revenue shall issue to the distributor a nonassignable license which shall continue in force until surrendered or canceled.

History: En. Sec. 13, Ch. 369, L. 1969; amd. Sec. 98, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in four places.

84-1858. Penalties—delinquent payment—procedure in case of failure to file statement or pay tax—lien for tax. Any license tax not paid within the time provided shall be delinquent and a penalty of ten per cent (10%) shall be added to the tax and the tax shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid. Upon a showing of good cause by the distributor, the department may waive penalty.

If any distributor or other person subject to the payment of such license tax shall willfully fail, neglect, or refuse to make any statement required by this act, or shall willfully fail to make payment of such license tax within the time provided, the state department of revenue shall be authorized to revoke any license issued under this act. In addition, the department shall inform itself regarding the matters required to be in such statement and determine the amount of the license tax due the state from such distributor, and shall add thereto a penalty of twenty-five dollars ($25) or ten per cent (10%) thereof, whichever is greater, together with interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer shall proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect such license tax. All license taxes, penalties and interest due from any distributor under the provisions of this act, shall be a lien upon any and all property of such distributor or other person upon the filing by the state department of revenue of a copy of its statement, or a certified copy of any statement filed with the department, in the office of the county clerk of the county where the

distributor's property is situated. The lien shall have precedence over any other claim, lien or demand filed or recorded thereafter. The lien may be enforced in the name of this state in the same manner as judgment liens are enforced. No action shall be maintained to enjoin the collection of all or any part of the license tax. When the amount due is paid in full before the entry of foreclosure decree, the state treasurer shall release the lien by filing in the office of the county clerk where the lien was filed, a written release. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of the lien a part of the distributor's property to enable the distributor to mortgage, sell or otherwise dispose of it in order to procure funds to pay taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to the lien to ensure the payment of all the unpaid taxes, penalty and interest.

History: En. Sec. 14, Ch. 369, L. 1969; amd. Sec. 99, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization near the end of the first paragraph and four times in the second paragraph.

84-1859. Penalties. Any distributor or other person, who fails, neglects, or refuses to make and file the statements required by this act in the manner or within the time provided, or who shall be delinquent in the payment of any license tax imposed by this act, or who shall make any false statement with reference to his business, or who shall make any false statement on any claim for refund or who violates any provision of the act, shall, in addition to any other penalties imposed, be deemed guilty of a misdemeanor and upon conviction shall be fined in any amount not exceeding one thousand dollars ($1,000) or imprisonment in the county jail for not to exceed six (6) months, or shall be punished by the imposition of both such fine and imprisonment.

History: En. Sec. 15, Ch. 369, L. 1969.

84-1860. Statute of limitations. Except in the case of a fraudulent return or of neglect, or refusal to make a return, every deficiency shall be assessed within three (3) years from the due date of the return or the date of filing the return, whichever period expires later.

History: En. Sec. 16, Ch. 369, L. 1969.

84-1861. Rules and regulations to be established by state department. The state department of revenue shall have the power, and it shall be its duty to adopt, publish and enforce the rules and regulations consistent with and necessary for carrying out the provisions of this act.

History: En. Sec. 17, Ch. 369, L. 1969; amd. Sec. 100, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

Separability Clause

Section 18 of Ch. 369, Laws 1969 read "If any section, subsection, sentence or clause in the act shall, for any reason, be held unconstitutional or void, such decision shall not affect the validity or meaning of any other portion of this act."

Repealing Clauses

Section 19 of Ch. 369, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Section 20 of Ch. 369, Laws 1969 read "Sections 84-1801, 84-1801.1, 84-1802, 84-1802.1, 84-1803, 84-1803.1, 84-1804, 84-1805, 84-1805.1, 84-1806, 84-1807, 84-1808, 84-1809, 84-1810, 84-1811, 84-1813, 84-1814, 84-1818, 84-1818.1, 84-1819, 84-1820, 84-1821, 84-1822, 84-1823, 84-1828, and 84-1829, R. C. M. 1947, are repealed."

84-1862. Tax to be collected on motor vehicles self-propelled by a liquefied petroleum gas. The department of highways shall, under the rules issued by the department, collect or cause to be collected from owners or operators of motor vehicles powered by any liquefied petroleum gas an annual license tax fee on each such vehicle, which license tax fee is prorated on a quarterly basis and may be paid quarterly, semiannually, or annually according to the following schedule:

(1) Passenger cars and pickups, whose licensed gross vehicle weight is 10,000 pounds or less, $60.

(2) Motor trucks and truck tractors whose licensed gross vehicle weight is over 10,000 pounds and less than 18,000 pounds, $80.

(3) Motor trucks and truck tractors, whose licensed gross vehicle weight is 18,000 pounds or more and less than 48,000 pounds, $200.

(4) Motor trucks and truck tractors, whose licensed gross vehicle weight is 48,000 pounds or more, $1,000.

Upon payment of the tax required by this section, the department of highways shall provide a certificate to be carried in each vehicle, which is valid for a period no less than a calendar quarter or for such further calendar period for which the tax is paid.

History: En. 84-1862 by Sec. 3, Ch. 473, L. 1975; amd. Sec. 1, Ch. 47, L. 1977.

Title of Act

An act to amend section 84-1831, R. C. M. 1947, to delete liquid petroleum gases as a special fuel; to amend section 84-1832.1, R. C. M. 1947, to eliminate the seven cents ($.07) tax a gallon on liquid petroleum gases used to propel motor vehicles upon the public highways and streets of this state, and to impose a license tax in lieu of a fuel tax on each and every vehicle self-propelled upon the public highways and streets of this state using liquid petroleum gases; and to provide collection of the license tax by the gross vehicle weight division of the department of highways.

Amendments

The 1977 amendment inserted "which license tax fee is prorated on a quarterly basis and may be paid quarterly, semiannually, or annually" in the first sentence; substituted "certificate to be carried in" in the last paragraph for "prominent sticker to be displayed on"; substituted "no less than a calendar quarter or for such further calendar period for which the tax is paid" at the end of the section for "beginning January 1 and ending December 31 of each calendar year"; and made minor changes in phraseology and style.

84-1862.1. Temporary trip permit required. (1) Upon entering the state, a nonresident operating any motor vehicle powered by liquefied petroleum gas is required to purchase a liquid petroleum gas temporary trip permit. The permits will be issued by scale house personnel, gross vehicle weight patrol crews, Montana highway patrolmen, and such other enforcing agents as the department of revenue may prescribe.

(2) A temporary liquid petroleum gas permit shall cost $20. The permit is valid for a period of time not to exceed 72 hours and will be automatically void if the vehicle leaves the state during this period. Special

liquid petroleum gas permits, remittance forms, and any other papers necessary for the enforcement of this act shall be furnished by the department of highways.

History: En. 84-1862.1 by Sec. 2, Ch. 47, L. 1977.

Title of Act

An act relating to the collection of the annual license tax fee on motor vehicles powered by liquefied petroleum gases; providing for an annual license tax, prorated quarterly and payable quarterly, semiannually or annually; amending sections 84-1862 and 84-1863, R. C. M. 1947.

84-1863. Certificate and fee nontransferable. The identifying certificate and license fee paid for each vehicle shall not be transferable on the sale or change of ownership to any person or vehicle other than that for which it was issued, with one exception. If the owner of a vehicle for which a current certificate has been issued replaces the vehicle, the remaining amount of tax paid for the unused calendar period may be credited to the tax payable for the issuance of a new certificate. The credit may not exceed the amount applicable to the unused period, and a refund is not allowed.

History: En. 84-1863 by Sec. 4, Ch. 473, L. 1975; amd. Sec. 3, Ch. 47, L. 1977.

Amendments

The 1977 amendment substituted "certificate" for "sticker" at the beginning of the first sentence; added "to any person or vehicle other than that for which it was issued, with one exception" to the end of the first sentence; and added the second and third sentences.

84-1864. Violations and penalties. Any person violating any provision of this act is guilty of misdemeanor, and upon conviction is punishable by a fine of not less than one hundred dollars ($100) nor more than two thousand dollars ($2,000) or by imprisonment for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment. The fine and imprisonment provided in this section shall be in addition to any other penalty imposed by any other provision in this act.

History: En. 84-1864 by Sec. 5, Ch. 473, L. 1975.

84-1865. Disposition of funds. All taxes collected under this act shall be turned over promptly to the state treasurer and the state treasurer shall place the same in the earmarked revenue fund to the credit of the department of highways.

History: En. 84-1865 by Sec. 6, Ch. 473, L. 1975.

CHAPTER 19—LICENSE AND OTHER TAX PROCEEDS—HOW DISPOSED OF

Section
84-1901. Disposition of moneys from certain designated license and other taxes.

84-1901. Disposition of moneys from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of:

(a) automobile drivers' license fees under section 31-135;

(b) electric energy producers' license taxes under sections 84-1601 to 84-1609, inclusive;

(c) metalliferous mines license taxes under sections 84-2001 to 84-2016, inclusive;

(d) telegraph license taxes under sections 84-2501 to 84-2508, inclusive;

(e) oil producers' license taxes under sections 84-2201 to 84-2211, inclusive;

(f) natural gas distributors' license taxes under sections 84-2101 to 84-2110, inclusive;

(g) liquor license taxes under Title 4;

(h) telephone license taxes under sections 84-2601 to 84-2608, inclusive; and

(i) inheritance and estate taxes under Title 91, chapter 44.

(2) Seventy-five per cent (75%) of all moneys received from the collection of income taxes under Title 84, chapter 49, corporation license taxes under Title 84, chapter 15, and corporation income tax, Title 84, chapter 61, shall be deposited in the general fund subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining twenty-five per cent (25%) of the proceeds of the corporation license tax, corporation income tax, and income tax shall be deposited to the credit of the earmarked revenue fund for state equalization aid to the public schools of Montana.

(3) The state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees and from all other sources under the operation of the Montana Beer Act, sections 4-301 to 4-356, inclusive, and all net revenues and receipts received by him from and under the operation of the State Liquor Control Act, sections 4-101 to 4-237, inclusive or as those sections may be renumbered or amended.

History: En. Sec. 1, Ch. 14, L. 1941; amd. Sec. 51, Ch. 147, L. 1963; amd. Sec. 6, Ch. 276, L. 1965; amd. Sec. 51, Ch. 100, L. 1973; amd. Sec. 1, Ch. 300, L. 1975.

Compiler's Notes

Sections 84-2101 to 84-2110, referred to in subdivision (1)(f) were repealed by Sec. 7, Ch. 245, L. 1975; and sections 4-101 to 4-237, 4-301 to 4-356, referred to in subsection (3), were either repealed or redesignated by Ch. 387, L. 1975, see supplement to Volume 1, Part 2.

Amendments

The 1973 amendment deleted "in order to comply with the provisions of section 1a of article XII of the constitution of the state of Montana" after "aid to the public schools of Montana" in the second sentence of subsection (2); and corrected an erroneous section number.

The 1975 amendment divided the section into subsections; divided subsection (1) into subdivisions (a) through (i); substituted "section 31-135" for "section 1741.-11" in subdivision (1)(a); deleted "chapter 4" before "Title 4" in subdivision (1)(g); substituted in subdivision (1)(i) "estate taxes under Title 91, chapter 44" for "estate taxes under sections 91-4401 to 91-4459"; substituted at the beginning of subsection (2) "Seventy-five per cent (75%) of all moneys" for "seventy per centum (70%) of all moneys"; substituted in subsection (2) "Title 84, chapter 49, corporation license taxes under Title 84, chapter 15 and corporation income tax, Title 84, chapter 61, shall be deposited in the general fund subject to" for "sections 84-4901 to 84-4935, inclusive, and corporation license taxes under sections 84-1501 to 84-1519, inclusive, subject to"; inserted "corporation income tax" after "corporation license tax" in the second sentence of subsection (2); added "or as those sections may be renumbered or

amended" at the end of the section; and made minor changes in phraseology and punctuation.

84-1902, 84-1903. Repealed.

Repeal

Sections 84-1902, 84-1903 (Secs. 2, 4, Ch. 14, L. 1941), relating to disposition of license tax proceeds, were repealed by Sec. 15, Ch. 126, Laws 1977.

CHAPTER 20—LICENSE TAXES—METALLIFEROUS MINES

Section

84-2002. Persons liable to pay license tax.
84-2003. Gross value of metal mine yield—computation.
84-2004. Rate of tax.
84-2005. Statement of gross value of product.
84-2006. Computation and notice of tax.
84-2007. Delinquent taxes—penalty.
84-2008. Procedure in case of failure to file statement.
84-2008.1. Procedure for collection of tax.
84-2009. False or erroneous statements—investigation concerning.
84-2010. Hearing on determination of value of gross product or amount of tax.
84-2013. Commencing business.
84-2016. Dissolved corporations to make returns on operation of mines and pay metals mines tax due.

84-2001. (2344.1) Repealed.

Repeal

Section 84-2001 (Sec. 1, Initiative No. 28, L. 1925), relating to the definition of person, was repealed by Sec. 24, Ch. 52, Laws 1977.

84-2002. (2344.2) **Persons liable to pay license tax.** Every person who engages in or carries on the business of working or operating any mine or mining property in the state of Montana from which gold, silver, copper, lead or any other metal or metals, or precious or semiprecious gems or stones of any kind shall be mined, extracted or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1925, and each year thereafter, when engaged in or carrying on such business, work or operations, pay to the state department of revenue; for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, work or operation in this state, provided, however, that nothing contained in this act shall be construed as requiring laborers or employees hired or employed by any person to mine or to work in or about any mine or mining business or property, to pay such license taxes, nor shall any discovery work required to be done in prospecting for or locating any mining claims, or any annual assessment work, or work required in the obtaining of title to mining property from the United States, or required by the laws of the United States or of this state in order to hold possessory title to any mining claims, be deemed the engaging in or carrying on of the business of working or operating any such mine or mining property.

History: En. Sec. 2, Initiative No. 28, 1925; amd. Sec. 1, Ch. 126, L. 1975.

Amendments

The 1975 amendment substituted "state

department of revenue" for "state treasurer" in the middle of the section; deleted "and shall pay to such state treasurer for such annual license the taxes hereinafter prescribed" after "work or operation in this state" in the middle of the section; and deleted "to procure such license or" after "to work in or about any mine or mining business or property" in the middle of the section.

Cross-References

Multistate tax compact, sec. 84-6701.

84-2003. (2344.3) **Gross value of metal mine yield—computation.** The total "gross value of product", as used in this act, shall mean the market value of all merchantable metals or precious and semiprecious gems and stones extracted or produced each year from any mine or mining property in the state of Montana or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from any such mine or mining property or from tailings resulting from the smelting, reduction, or treatment of any such ores. Whenever the ores require smelting, reduction, or treatment to ascertain the metal contents of such ores, the gross value of the product thereof shall be determined by taking the market value of all merchantable metals or mineral products extracted or recovered thereby, as shown by the gross smelter returns of such metals or mineral product in dollars and cents without any deductions for costs of smelting, reduction, or treatment or otherwise, based upon the average quotations of the price of such metals or mineral products in the city of New York, as evidenced by some established authority or market report, giving the market reports during the calendar year immediately preceding. Should there be no quotation covering any particular product, the department of revenue shall fix the value of such gross product or such portion thereof in such a manner as may seem equitable.

History: En. Sec. 3, Initiative No. 28, 1925; amd. Sec. 101, Ch. 516, L. 1973; amd. Sec. 4, Ch. 156, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the last sentence.

The 1977 amendment deleted "such as the Engineering and Mining Journal of New York City, or other standard publication" after "some established authority or market report" near the end of the next-to-last sentence, and made minor changes in phraseology and punctuation.

84-2004. (2344.4) **Rate of tax.** The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones are produced shall be an amount computed on the gross value of product which may have been derived by such person from such business, work, or operation within this state during the calendar year immediately preceding, at the following rates:

Gross value of product	Rate of Tax (percentage of gross value)
first $100,000	0.15%
more than $100,000 and not more than $250,000	0.575% of the increment
more than $250,000 and not more than $400,000	0.86% of the increment

more than $400,000 and not more than $500,000	1.15% of the increment
more than $500,000	1.438% of the increment

History: En. Sec. 4, Initiative No. 28, 1925; amd. Sec. 1, Ch. 220, L. 1957; amd. Sec. 1, Ch. 176, L. 1959; amd. Sec. 1, Ch. 9, Ex. L. 1969; amd. Sec. 1, Ch. 392, L. 1971; amd. Sec. 2, Ch. 126, L. 1975; amd. Sec. 5, Ch. 156, L. 1977.

Amendments

The 1969 amendment added a proviso, applicable only to production years 1969 and 1970, which imposed a new tax of .15% on the first $100,000 of production and increased the rates from .5% to .575% on production between $100,000 and $250,000, from .75% to .86% on production between $250,000 and $400,000, from 1% to 1.15% on production from $400,000 to $500,000, and from 1.25% to 1.438% on production over $500,000.

The 1971 amendment made the 1969 rates permanent by inserting "for the production years commencing on or after January 1, 1970 and for each production year thereafter," by substituting the 1969 rates in the main portion of the section, and by deleting the proviso added by the 1969 amendment.

The 1975 amendment substituted "for each production year thereafter, be an amount" for "for each production year thereafter, one dollar ($1) together with an additional sum or amount" in the first part of the section; and made a minor change in style.

The 1977 amendment deleted a clause making this section applicable to production years commencing after January 1, 1970; substituted the schedule of tax rates for prior provisions establishing the amount of tax; and made minor changes in phraseology, punctuation and style.

Effective Dates

Section 2 of Ch. 9, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

Section 2 of Ch. 392, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

84-2005. (2344.5) **Statement of gross value of product.** Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones are produced, must, not later than the fifteenth day of April, in such year when engaged in or carrying on any such business, work or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by such person during the calendar year immediately preceding. Such statement shall be in the form prescribed by the state department of revenue and must be delivered to the state department of revenue not later than the fifteenth day of April. The state department of revenue may grant a reasonable extension of time for filing statements upon good cause shown therefor. Such statement shall show the following:

1 to 3. * * * [Same as parent volume.]

4. The name and location of the smelter, mill or reduction works to which such ore has been shipped or sold during the period covered by the statement and such other information as the state department of revenue may require.

5 and 6. * * * [Same as parent volume.]

History: En. Sec. 5, Initiative No. 28, 1925; amd. Sec. 102, Ch. 516, L. 1973; amd. Sec. 3, Ch. 126, L. 1975.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" twice in the preliminary clause and once near the end of subdivision 4.

The 1975 amendment deleted "and must be verified by the oath of such person, or the manager, superintendent, agent, president or vice-president of the corporation, joint stock or other company or syndicate" before "and must be delivered" in the second sentence of the first paragraph; and inserted the third sentence of the first paragraph.

84-2006. (2344.6) **Computation and notice of tax.** The state department of revenue shall examine each such statement and return filed and determine and ascertain therefrom, and compute and assess the amount of the license tax to be paid by the person making and filing the same, and shall, not later than the first day of June, mail to each person making and filing such statement and return, a written notice of the amount of the license tax to be paid by each, respectively, that the same is due and payable and that it will become delinquent at five o'clock p.m. on the thirtieth day of June, immediately following, and that if the same becomes delinquent a penalty of ten per cent (10%) will be added thereto, and that the whole amount of such license tax, with penalty added, will bear interest at the rate of one per cent (1%) per month or fraction thereof from the date the same becomes delinquent until paid. If any such person, has sold or otherwise disposed of any of its mine's products at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state department of revenue shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state department of revenue shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 6, Initiative No. 28, 1925; amd. Sec. 1, Ch. 165, L. 1959; amd. Sec. 103, Ch. 516, L. 1973; amd. Sec. 4, Ch. 126, L. 1975.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in four places.

The 1975 amendment deleted "certify to the state treasurer the name of each person subject to the payment of license taxes under the provisions of this act, the amount thereof to be paid by such person. The said department shall at the same time" after "not later than the first day of June" near the beginning of the section; deleted "to the state treasurer" after "that the same is due and payable" in the first sentence; substituted in the middle of the section "one per cent (1%) per month or fraction thereof" for "twelve per centum per annum"; and made minor changes in phraseology.

84-2007. (2344.7) **Delinquent taxes—penalty.** All license taxes assessed under the provisions of this act shall become delinquent if not paid by five o'clock p.m., on the thirtieth day of June following the date when the same are assessed, and as the same become delinquent a penalty of ten per cent (10%) shall be added thereto, and the whole amount of said license tax, with penalty added, shall bear interest at the rate of one per cent (1%) per month or fraction thereof from the date of becoming delinquent until paid.

History: En. Sec. 7, Initiative No. 28, 1925; amd. Sec. 2, Ch. 165, L. 1959; amd. Sec. 5, Ch. 126, L. 1975.

Amendments

The 1975 amendment deleted "and certified to the state treasurer" after "when

the same are assessed"; substituted "interest at the rate of one per cent (1%) per month or fraction thereof" for "interest at the rate of twelve per centum per annum"; and made a minor change in style.

84-2008. (2344.8) **Procedure in case of failure to file statement.** If any person shall fail, refuse or neglect to make and file such statement and return within the time prescribed, the state department of revenue, shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state, and from any other information which the department may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the license tax is to be paid and shall make and file a statement showing the amount of such gross value of product and shall ascertain and determine and compute and assess the amount of the license taxes due from, and to be paid by such person, and shall immediately give notice to such person in the same manner as though such statement had been filed within time, and shall proceed to collect such license tax, adding thereto and collecting therewith, if the same is delinquent, the same penalty and interest as provided for herein for other delinquencies.

History: En. Sec. 8, Initiative No. 28, 1925; amd. Sec. 104, Ch. 516, L. 1973; amd. Sec. 6, Ch. 126, L. 1975.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in two places.

The 1975 amendment deleted "and license issued" after "license tax is to be paid" in the middle of the section; deleted "certify the same to the state treasurer, and" after "and shall immediately" in the middle of the section; and deleted near the end of the section "the state" after "filed within time, and."

84-2008.1. Procedure for collection of tax. All tax, penalty, and ininterest due from any person under this act shall be a lien upon any and all real property of such person when the department of revenue files in the office of the county clerk in the county where such real property is situated a certified copy of its statement of estimated tax computed under 84-2008. This lien shall have precedence over any other claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

History: En. 84-2008.1 by Sec. 10, Ch. 126, L. 1975; amd. Sec. 6, Ch. 156, L. 1977.

Title of Act

An act to amend sections 84-2002, 84-2004, 84-2005, 84-2006, 84-2007, 84-2008, 84-2009, 84-2010, 84-2011, and 84-2013, R. C. M. 1947, relating to the metalliferous mines license tax; repealing section 84-2012, R. C. M. 1947.

Amendments

The 1977 amendment substituted "when the department * * * under 84-2008" in the first sentence for "upon the filing of the state department of revenue of the duplicate of the statement so made by the state department of revenue, or a certified copy of any statement filed by said department in the office of the county clerk in the county where such real property is situated"; and made minor changes in phraseology and punctuation.

84-2009. (2344.9) **False or erroneous statements—investigation concerning.** (1) Should the state director of the department of revenue have reason to believe that any statement and return is false, or erroneous in any

particular, it may require the person, or if made by a corporation, association or company, the officers thereof, and the employees of any such person, corporation, association or company, to appear before the director of revenue or his agent and testify concerning the same and any statement contained therein, and may examine all books, records, papers and documents of such person pertaining to such business, upon giving five days' written notice to such persons, or officers or employees thereof having custody of such books, records, papers and documents, and any person failing, refusing or neglecting to so appear, or refusing to be sworn or to testify, or refusing to answer any material question propounded by the director or any of his employees, or refusing to permit the director, or his employees to examine such books, records, papers or documents, or any thereof, pertaining to such business, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. If the director, after hearing such evidence and after such examination of the books, papers, documents and records of such person, shall find and determine that such statement and return is erroneous or false in any material matter, the director shall change and correct the same so as to show the true gross value of product and shall reassess the amount of the license tax due from such person, and may add thereto a penalty of not exceeding fifty per cent (50%), and shall thereupon immediately mail to such person a written notice of the corrections and changes made in such statement and return and the amount of the license tax and penalty due and payable.

(2) The state department of revenue shall collect such license tax with penalty added, and if the same has become delinquent he shall also collect interest thereon from the date of delinquency until paid at the rate of one per cent (1%) per month or fraction thereof. Provided further, that in order to verify such statement and return the state department of revenue may require any person, corporation, association, or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced from any mine or mining property in the state of Montana to appear before the director of revenue and testify concerning the gross mineral content of any such ore, or at the request of said director to furnish sworn statements showing the gross yield of such ores, mineral products or deposits in constituents of commercial value, that is to say, the number of ounces of gold, silver, pounds of copper, lead or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement during the period covered by such statement, without any deductions whatsoever for smelting, milling, reduction or treatment of such ores or mineral product.

(3) The books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana shall be open to inspection and examination by the director of revenue or his employees at any time or place that the director may designate.

(4) If any person required by this act to make or file any statement, or to verify, under oath any statement, shall make such statement false in any material respect, or shall verify, under oath, any statement false in any respect or shall fail, neglect or refuse to file any statement required by said state department of revenue or shall refuse to appear before the director of revenue to testify concerning the gross mineral content of any such ore, or shall refuse to allow the director or his employees at any time or place to inspect or examine the books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 9, Initiative No. 28, 1925; amd. Sec. 72, Ch. 405, L. 1973; amd. Sec. 7, Ch. 126, L. 1975.

Amendments

The 1973 amendment substituted references to the department of revenue, the director, and his agents and employees for references to the state board of equalization.

The 1975 amendment deleted "certify the amount of such license tax with the penalty added thereto to the state treasurer, and shall at the same time" near the end of subsection (1) after "shall thereupon immediately"; substituted "penalty due and payable" for "penalty certified to the state treasurer" at the end of subsection (1); substituted "The state department of revenue" at the beginning of subsection (2) for "The state treasurer"; substituted "rate of one per cent (1%) per month or fraction thereof" for "rate of twelve per centum per annum" at the end of the first sentence in subsection (2); and made minor changes in phraseology and style.

84-2010. (2344.10) **Hearing on determination of value of gross product or amount of tax.** Every person whose license tax has been determined and assessed by the department of revenue under any of the provisions of this act who feels aggrieved by the determination and assessment of the department as to the amount of gross value of product or as to the amount of the license tax may, at any time within 10 days after the receipt of the required notice of such determination and assessment, file with the state tax appeal board a petition for a hearing in which petition must be stated the grounds and reasons therefor and the manner in which the amount of the gross value of product or the amount of the license tax, or both, should be changed or corrected. Upon the filing of such petition, if it appears to the satisfaction of the state tax appeal board therefrom that the department has erred in any manner in ascertaining and determining the amount of the gross value of product or the amount of the license tax, or both, the board shall immediately correct such error or errors; and if such correction is in conformity with the request contained in the petition for a hearing, the board shall take no further steps in connection with such petition other than to notify the department of the correct amount of the license tax due from such person after the making of such correction, and notifying such person thereof. If from such examination it does not appear to the satisfaction of the state tax appeal board that the department has erred in any manner, the board shall grant the hearing, fix a day when the board will take up and hear such matter, and give notice to such person of such date of hearing as the board considers reasonable. At the hearing of such

petition, any taxpayer interested and the department may introduce witnesses and present testimony on any material matters connected with such return and license tax, and after considering such evidence the board shall fix and determine the gross value of product and reassess the amount of the license tax to be paid by such person and give notice thereof to such person and the department of revenue.

History: En. Sec. 10, Initiative No. 28, 1925; amd. Sec. 73, Ch. 405, L. 1973; amd. Sec. 8, Ch. 126, L. 1975; amd. Sec. 7, Ch. 156, L. 1977.

Amendments

The 1973 amendment substituted references to the state department of revenue and to the state tax appeal board for references to the state board of equalization; substituted "hearing" for "rehearing" in the middle of the first sentence; and substituted "present testimony" for "take testimony" in the final sentence.

The 1975 amendment substituted "other than to notify the state department of revenue of the correct amount" near the end of the second sentence for "other than to certify to the state treasurer the amount"; substituted "At the hearing of such" at the beginning of the fourth sentence for "On such hearing"; and substituted "thereof to such person and the state department of revenue" for "thereof in the manner required by section 84-2006" at the end of the section.

The 1977 amendment changed the time within which a taxpayer petition may be filed from 10 days after the date of the required notice to 10 days after its receipt; deleted a requirement that the petition "set forth particularly and specifically" the grounds for a hearing; and made minor changes in phraseology, punctuation and style.

84-2011. (2344.11) **Repealed.**

Repeal

Section 84-2011 (Sec. 11, Initiative No. 28, L. 1925; Sec. 73, Ch. 405, L. 1973; Sec. 9, Ch. 126, L. 1975), relating to liens for collection of tax, was repealed by Sec. 12, Ch. 156, Laws 1977.

84-2012. (2344.12) **Repealed.**

Repeal

Section 84-2012 (Sec. 12, Initiative No. 28, 1925; Sec. 7, Ch. 14, L. 1941; Sec. 106, Ch. 516, L. 1973), relating to license for metalliferous mine, was repealed by Sec. 12, Ch. 126, Laws of 1975.

84-2013. (2344.13) **Commencing business.** If any person shall, after the first day of January of any year, engage in or commence the carrying on of the business of working or operating a mine or mining property in this state, from which any merchantable metal, precious, and semiprecious gems and stones are extracted and produced, such person, must, within sixty (60) days after so engaging in or commencing to carry on such business, notify the state department of revenue of such fact.

History: En. Sec. 13, Initiative No. 28, 1925; amd. Sec. 107, Ch. 516, L. 1973; amd. Sec. 11, Ch. 126, L. 1975.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

The 1975 amendment substituted "notify the state department of revenue of such fact" for "notify both the state department of revenue and the state treasurer of such fact" at the end of the section; and made a minor change in style.

Repealing Clause

Section 12 of Ch. 126, Laws 1975 read "Section 84-2012, R. C. M. 1947, is repealed."

84-2016. Dissolved corporations to make returns on operation of mines and pay metals mines tax due. Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year

shall make all statements, reports and returns required by law to be made with reference to the carrying on of the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones, are produced and pay the tax due for such period as it carried on such business, on or before the date of such dissolution or cessation of business. The state department of revenue may grant a reasonable extension of time for filing returns upon good cause shown therefor.

History: En. Sec. 1, Ch. 11, L. 1941; amd. Sec. 108, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the final sentence.

CHAPTER 21—LICENSE TAXES—NATURAL GAS DISTRIBUTORS

(Repealed—Section 7, Chapter 245, Laws of 1975)

84-2101 to 84-2110. (2408.1 to 2408.8, 2408.10, 2408.11) **Repealed.**

Repeal

Sections 84-2101 to 84-2110 (Secs. 2 to 8, 10, 11, Ch. 180, L. 1933; Sec. 1, Ch. 52, Ex. L. 1933; Sec. 1, Ch. 205, L. 1957; Sec. 1, Ch. 8, Ex. L. 1969; Sec. 1, Ch. 325, L. 1971; Secs. 109 to 112, Ch. 516, L. 1075), relating to license taxes for natural gas distributors, were repealed by Sec. 7, Ch. 245, Laws of 1975.

CHAPTER 22—LICENSE TAXES—OIL PRODUCERS

Section

84-2202. Oil or gas producers' severance tax—amount—exceptions.
84-2203. Payment of tax.
84-2204. Determination of gross value of product.
84-2205. Producers to file reports.
84-2206. Record of product—carriers to furnish data.
84-2207. Statement to accompany payment—records—collection of tax—refunds.
84-2209. Procedure to compute tax in absence of statement—penalty—interest.
84-2209.1. Procedure for collection of tax.
84-2212. Policy.
84-2213. Exemption from net proceeds and severance tax.

84-2201. (2397) **Repealed.**

Repeal

Section 84-2201 (Sec. 1, Ch. 266, L. 1921), relating to the definition of person, was repealed by Sec. 24, Ch. 52, Laws 1977.

84-2202. (2398) **Oil or gas producers' severance tax—amount—exceptions.** (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced sufficient in quantity to justify the marketing of the same must, except as provided in 84-2213, each year when engaged in or carrying on any such business in this state, pay to the department of revenue, for the exclusive use and benefit of the state of Montana, a severance tax computed at the following rates:

(a) 2.1% of the first $6,000 of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or each lease within a unitized property in the calendar quarter;

(b) 2.65% of the total gross value of that portion of all the production of such person from each lease or each lease within a unitized property in each calendar quarter in excess of the first $6,000 of the total gross value; but in determining the amount of such tax there shall be excluded from consideration all petroleum or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such petroleum or crude or mineral oil. Nothing in this act may be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well or to work in or about any oil well or prospect or explore for or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such severance tax, nor may any work done or the drilling of any well or wells for the purpose of prospecting or exploring for petroleum or other mineral or crude oils or for the purpose of developing same be considered to be the engaging in or carrying on of any such business. If in the doing of any such work, in the drilling of any oil well, or in such prospecting, exploring, or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation is produced sufficient in quantity to justify the marketing of the same, such work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of such business within this state within the meaning of this section.

(c) 2.65% of the total gross value of natural gas produced from each lease or unit, but in determining the amount of such tax there shall be excluded from consideration all gas produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such gas or petroleum or crude or mineral oil; and there shall also be excluded from consideration all gas recycled or reinjected into the ground.

(2) For purposes of computing the tax in subsections (1)(a) and (1)(b) above, lease count includes all leases contributing to the unitized area within a unit or all tracts within a unit participating in production.

(3) Every person required to pay such tax hereunder shall pay the same in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of such extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the aforesaid interests that are owned by the federal, state, county, or municipal governments shall be exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts.

History: En. Sec. 2, Ch. 266, L. 1921; re-en. Sec. 2398, R. C. M. 1921; amd. Sec. 1, Ch. 67, L. 1923; amd. Sec. 1, Ch. 221, L. 1957; amd. Sec. 1, Ch. 172, L. 1959; amd. Sec. 1, Ch. 359, L. 1969; amd. Sec. 1, Ch. 245, L. 1975; amd. Sec. 1, Ch. 262, L. 1975; amd. Sec. 1, Ch. 412, L. 1975; amd. Sec. 8, Ch. 156, L. 1977; amd. Sec. 1, Ch. 160, L. 1977; amd. Sec. 3, Ch. 256, L. 1977.

Compiler's Notes

Section 2 of Ch. 412, Laws 1975 read "If a bill to amend section 84-2202 to tax the production of natural gas is enacted in 1975, it is the intention of the legislature that this act applies to natural gas production as well as oil production."

Section 3 of Ch. 412, Laws 1975 read "Nothing in this act may be construed to impair obligations under contracts in force as of the effective date of this act, if such construction would violate the United States constitution."

This section was amended three times in 1977 by Chs. 156, 160, and 256. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

The 1969 amendment substituted "two and one-tenths per cent (2.1%)" for "two per cent" in subdivision (a) and "two and sixty-five hundredths per cent (2.65%)" for "two and one-half per cent" in subdivision (b); and added subdivision (c), now subdivision (d).

Chapter 245, Laws of 1975, inserted "or natural gas" after "crude oil" throughout the section; substituted "severance tax" for "license tax" in the first paragraph and in subdivision (b); inserted subdivision (c) and redesignated former subdivision (c) as (d); and made minor changes in phraseology and style.

Chapter 262, Laws of 1975, substituted "department of revenue" for "state treasurer" in the first paragraph.

Chapter 412, Laws of 1975, substituted the language at the end of subdivision (d) beginning with "except that any of the aforesaid . . ." for "in all leases establishing royalty interests entered into hereafter or in renewals of existing leases, or in division of proceeds orders, or by other contracts, such other owner or owners may agree with every person required to pay such tax that such other owner or owners will pay their prorata share of said tax, and that said prorata share may be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts."

Chapter 156, Laws of 1977, inserted the subsection (1) designation at the beginning of the section; redesignated former subdivision (d) as subsection (2); and made minor changes in phraseology, punctuation and style.

Chapter 160, Laws 1977, inserted a subsection (1) designation at the beginning of the section; rewrote subdivision (1)(a) which read "Two and one-tenth per cent (2.1%) of the total gross value of that portion of all the petroleum and other mineral or crude oil produced by such person from each lease or unit in the calendar quarter not in excess of an amount obtained by multiplying the number of producing wells on such lease or unit by four hundred fifty (450) barrels"; substituted "from each lease or each lease within a unitized property in each calendar quarter in excess of the first $6,000 of the total gross value" in subdivision (1)(b) for "from each lease or unit in each calendar quarter in excess of four hundred fifty (450) barrels multiplied by the number of producing wells on such lease or unit"; inserted subsection (2); redesignated former subdivision (d) as subsection (3); and made minor changes in phraseology, punctuation and style.

Chapter 256, Laws of 1977, inserted "except as provided in 84-2213 of this act" in the introductory paragraph of subsection (1); and made minor changes in style.

Effective Date

Section 2 of Ch. 359, Laws 1969 read "This act is effective for all taxable years commencing after December 31, 1968."

Cross-References

Multistate tax compact, sec. 84-6701.

84-2203. (2399) **Payment of tax.** Such severance tax shall be paid in quarterly installments for the quarterly periods ending respectively March 31, June 30, September 30 and December 31, of each year, and the amount of the tax for each quarterly period shall be paid to the state department of revenue within sixty (60) days after the end of each quarterly period.

History: En. Sec. 3, Ch. 266, L. 1921; re-en. Sec. 2399, R. C. M. 1921; amd. Sec. 2, Ch. 67, L. 1923; amd. Sec. 8, Ch. 14, L. 1941; amd. Sec. 113, Ch. 516, L. 1973; amd. Sec. 2, Ch. 245, L. 1975; amd. Sec. 2, Ch. 262, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 245 and once by Ch. 262. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to

conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

Chapter 245, Laws of 1975 substituted "Such severance tax" for "Such license tax" at the beginning of the section; and deleted "license" before "tax for each quarterly period" in the middle of the section.

Chapter 262, Laws of 1975 substituted "within sixty (60) days" for "within thirty (30) days."

84-2204. (2400) **Determination of gross value of product.** The total gross value of all petroleum, and other mineral or crude oil or natural gas produced each year shall be determined by taking the total number of barrels or cubic feet thereof produced each month during such year at the average value at the mouth of the well during the month the same is produced, as determined by the state department of revenue; provided, however, that in computing the total number of barrels of petroleum, and other mineral or crude oil or cubic feet of gas produced, there shall be deducted therefrom so much thereof as is used by such person in connection with the operation of the well from which said oil or gas is produced or for pumping said petroleum or other mineral or crude oil or gas from the said well to a tank or pipeline.

History: En. Sec. 4, Ch. 266, L. 1921; re-en. Sec. 2400, R. C. M. 1921; amd. Sec. 3, Ch. 67, L. 1923; amd. Sec. 114, Ch. 516, L. 1973; amd. Sec. 3, Ch. 245, L. 1975.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" immediately before the proviso.

The 1975 amendment inserted references to natural gas and cubic feet of natural gas throughout the section.

84-2205. (2401) **Producers to file reports.** Each and every person engaged in such business in the state of Montana at the date when this act becomes effective, must, not later than the thirtieth day of April, 1923, and every person who shall engage in such business at any time after the date when this act becomes effective, must, immediately upon engaging in such business, file with the state department of revenue, a certificate and statement, on forms prescribed by the state department of revenue, which shall contain the name under which such person is engaging in and carrying on such business in this state, giving the place or places of business and location of the well or wells owned, leased, controlled or operated by such person; the name and address of the managing agent in this state, if an association, corporation, joint-stock company, or syndicate, or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company, corporation or syndicate, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the department may deem necessary.

History: En. Sec. 5, Ch. 266, L. 1921; re-en. Sec. 2401, R. C. M. 1921; amd. Sec. 4, Ch. 67, L. 1923; amd. Sec. 115, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-2206. (2402) **Record of product—carriers to furnish data.** Every such person shall keep a record in such form as the department of revenue

may require of all petroleum and other mineral or crude oil or natural gas extracted or produced by such person in this state, and such records shall at all times during the business hours of the day be subject to inspection by the department or its agents or employees. It shall be the duty of railroad, pipeline, and transportation companies carrying crude or mineral oil or natural gas to furnish to the department, whenever requested so to do, all data relative to the shipment of such products that may be required to properly enforce the provisions of this act. The failure of any railroad, pipeline, or transportation company to comply with the provisions of this section shall make such company liable to a penalty of $100 for each day it fails to furnish such statement.

History: En. Sec. 6, Ch. 266, L. 1921; re-en. Sec. 2402, R. C. M. 1921; amd. Sec. 5, Ch. 67, L. 1923; amd. Sec. 116, Ch. 516, L. 1973; amd. Sec. 4, Ch. 245, L. 1975; amd. Sec. 9, Ch. 156, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

The 1975 amendment inserted references to natural gas; and made a minor change in style.

The 1977 amendment deleted "members" before "agents or employees" at the end of the first sentence; and made minor changes in phraseology, punctuation and style.

84-2207. (2403) **Statement to accompany payment—records—collection of tax—refunds.** (1) Each and every person must, within 60 days after the end of each following quarter, make out on forms prescribed by the department of revenue a statement showing the total number of barrels of merchantable or marketable petroleum, and other mineral or crude oil or cubic feet of natural gas produced or extracted by such person in the state of Montana during each month of such quarter and during the whole quarter, the average value thereof during each month and the total value thereof for the whole quarter, together with the total amount due to the state as severance taxes for such quarter; and must, within such 60 days deliver such statement and, except as provided in 84-2213, pay to the department of revenue the amount of the taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company or syndicate making the same. Any such person engaged in carrying on such business at more than one place in this state, or owning, leasing, controlling, or operating more than one oil or gas well in this state, may include all thereof in one statement. The department of revenue shall receive and file all such statements and collect and receive from such person making and filing a statement the amount of tax payable by such person, if any, as the same shall appear from the face of the statement.

(2) It shall be the duty of the department of revenue to examine each of such statements and compute the taxes thereon, and the amount so computed by the department of revenue shall be the taxes imposed, assessed against and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the

taxpayer to the department of revenue within 10 days after written notice of the amount of the deficiency shall be mailed by the department of revenue to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be applied as a credit against tax liability for subsequent quarters, or refunded if there is no subsequent tax liability.

History: En. Sec. 7, Ch. 266, L. 1921; re-en. Sec. 2403, R. C. M. 1921; amd. Sec. 6, Ch. 67, L. 1923; amd. Sec. 1, Ch. 449, L. 1973; amd. Sec. 117, Ch. 516, L. 1973; amd. Sec. 5, Ch. 245, L. 1975; amd. Sec. 4, Ch. 256, L. 1977.

Amendments

Chapter 449, Laws of 1973, extended the quarterly filing date specified near the beginning of the section from thirty to sixty days after the end of the quarter; deleted "in duplicate" following "makeout" near the beginning of subsection (1); substituted references to the department of revenue for references to the state board of equalization and state treasurer throughout the section; deleted "and deliver to the state treasurer" following "on forms prescribed by the department of revenue" near the beginning of subsection (1); deleted former subsection (2) and redesignated subsection (3) as (2); deleted from subsection (2) a first sentence requiring the state treasurer to deliver statements to the board of equalization; inserted "applied as a credit against tax liability for subsequent quarters, or" in the last sentence of subsection (2); substituted "refunded if there is no subsequent tax liability" for "refunded to the person making such payment" at the end of subsection (2); and made minor changes in phraseology.

Chapter 516, Laws of 1973, substituted references to the department of revenue for references to the state board of equalization.

The 1975 amendment deleted "within thirty days after the quarter ending March 31, 1923 and" after "Each and every person must" at the beginning of subsection (1); inserted reference to cubic feet of natural gas; substituted "amount due to the state as severance taxes" for "amount due to the state as license taxes" in the first sentence of subsection (1); deleted "license" after "department of revenue the amount of the" in the first sentence of subsection (1); and substituted "one oil or gas well" for "one oil well" in the third sentence of subsection (1).

The 1977 amendment inserted "except as provided in 84-2213" in the first sentence of subsection (1); and made minor changes in style.

Effective Date

Section 2 of Ch. 449, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 23, 1973.

84-2209. (2405) **Procedure to compute tax in absence of statement—penalty—interest.** If any such person shall fail, neglect or refuse to file any statement required by section 84-2207, within the time therein required, the state department of revenue shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of barrels of petroleum and other mineral or crude oil or cubic feet of gas extracted and produced by such person in this state during such quarter, and during each month thereof, and the average value thereof during each such month, and shall determine and fix the amount of the severance taxes due to the state from such person for such quarter and shall add to the amount of such severance taxes a penalty of ten per cent (10%) thereof, plus interest at the rate of one per cent (1%) per month or fraction thereof computed on the total amount of severance taxes and penalty. Interest shall be computed from the date the severance taxes were due to the date of payment. The state department of revenue shall mail to the person required to file a quarterly statement and pay any severance tax, a letter setting forth the amount of severance tax, penalty, and interest due and the letter shall further contain a statement that if payment is not made within such time a lien may be filed as set forth in 84-2209.1. Upon receipt of said letter

the person shall remit to the department of revenue the full amount of severance tax, penalty and interest due within fifteen (15) days. The ten per cent (10%) penalty herein provided may be waived by the state department of revenue if reasonable cause for the failure and neglect to file the statement required by section 84-2207 is provided to the said department.

History: En. Sec. 9, Ch. 266, L. 1921; re-en. Sec. 2405, R. C. M. 1921; amd. Sec. 8, Ch. 67, L. 1923; amd. Sec. 1, Ch. 328, L. 1969; amd. Sec. 118, Ch. 516, L. 1973; amd. Sec. 6, Ch. 245, L. 1975; amd. Sec. 3, Ch. 262, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 245 and once by Ch. 262. Neither amendatory act mentioned or included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment added the last sentence.

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in four places.

Chapter 245, Laws of 1975, inserted "or cubic feet of gas" after "other mineral or crude oil" near the beginning of the section; and substituted "severance taxes" for "license taxes" throughout the section.

Chapter 262, Laws of 1975, deleted "and shall make out a statement, in duplicate, showing the same" after "for such quarter" near the middle of the section; substituted "and shall add to the amount of such severance taxes * * * and interest due within fifteen days" near the middle of the section for "and shall add to the amount of such taxes a penalty of twenty-five per cent thereof, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent, per annum from the date of the making of such statement by the state department of revenue until paid. Upon request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same"; and substituted "ten per cent (10%) penalty" for "twenty-five per cent penalty" in the last sentence of the section.

Repealing Clause

Section 7 of Ch. 245, Laws 1975 read "Sections 84-2101 through 84-2110, R. C. M. 1947, are repealed."

84-2209.1. Procedure for collection of tax. All tax, penalty, and interest due from any person under this act shall be a lien upon any and all real property of such person when the department of revenue files in the office of the county clerk in the county where such real property is situated a certified copy of its statement of estimated tax computed under 84-2209. This lien shall have precedence over any other claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

History: En. 84-2209.1 by Sec. 4, Ch. 262, L. 1975; amd. Sec. 10, Ch. 156, L. 1977.

Title of Act

An act to amend sections 84-2202, 84-2203, and 84-2209, R. C. M. 1947, relating to the oil producers' license tax.

Amendments

The 1977 amendment substituted "when the department * * * under 84-2209" in the first sentence for "upon the filing of the state department of revenue of the duplicate of the statement so made by the state department of revenue, or a certified copy of any statement filed by said department in the office of the county clerk in the county where such real property is situated"; and made minor changes in phraseology, punctuation and style.

84-2212. Policy. It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state and to lessen Montana's dependence on imported natural gas.

History: En. 84-2212 by Sec. 1, Ch. 256, L. 1977.

Title of Act

An act to encourage exploration for natural gas by exempting new gas production consumed in Montana from one-half of the net proceeds tax and all the severance tax for a 3-year period; amending sections 84-2202, 84-2207, 84-6204, and 84-6208, R. C. M. 1947.

84-2213. Exemption from net proceeds and severance tax. (1) Natural gas produced from a well 5000 feet deep or deeper on which drilling was commenced after December 31, 1976, but before December 31, 1980, is exempt from one-half the net proceeds tax imposed by chapter 62, Title 84 and all of the severance tax imposed by 84-2202 for 3 years if the gas produced from the well is

(a) placed into a natural gas distribution system for delivery to consumers after diligent completion of the well, and

(b) distributed by a natural gas distribution system serving only natural gas consumers a majority of which are within Montana, or at least 10,000 natural gas consumers within Montana. The 3 year exemption provided by this section shall begin when natural gas from a qualifying well is first placed into a natural gas distribution system.

(2) Notwithstanding the provisions of subsection (1), all reporting requirements under the net proceeds and severance taxes remain in effect.

History: En. 84-2213 by Sec. 2, Ch. 256, L. 1977.

CHAPTER 23—LICENSE TAXES—SLEEPING CAR COMPANIES

Section
84-2301. Definitions.
84-2302. Reports.
84-2303. Assessment.
84-2304. Method of determining valuation.
84-2305. Notice of hearing concerning valuation—right to appear and be heard.
84-2306. License tax—amount—levy—notice—payment.

84-2301. (2315.1) **Definitions.** (1) The term "department" when used in this act shall mean the state department of revenue.

(2) Any person, company, association, or corporation (not being a railroad company or a lessee of a railroad company) wherever organized or incorporated, owning and operating or operating any cars known as dining, buffet, chair, parlor, palace, or sleeping cars which are used upon railroads within this state, unless the ownership of such cars be identical with that of the lines of railroads on which they are operated, shall be deemed a "sleeping car company" for the purposes of this act.

History: En. Sec. 1, Ch. 64, L. 1923; amd. Sec. 119, Ch. 516, L. 1973; amd. Sec. 5, Ch. 52, L. 1977.

Amendments

The 1973 amendment substituted the definition of "department" for a definition of "board."

The 1977 amendment deleted "persons, copartnership, joint stock" after "Any person" in subsection (2); and made minor changes in punctuation and style.

84-2302. (2315.2) **Reports.** Every sleeping car company shall annually on or before the first day of March and in such forms and covering

such period as the state department of revenue shall prescribe, make and file with it a statement verified by the oath of the person, agent or officer making the same, setting forth the facts called for. Such report shall contain:

(1) to (12). * * * [Same as parent volume.]

(13) Such other facts and information as such company or the state department of revenue may deem material upon the question of the true and full value of said property within this state. The department shall furnish forms upon which to make such reports.

History: En. Sec. 2, Ch. 64, L. 1923; amd. Sec. 120, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in the preliminary clause and subdivision (13).

84-2303. (2315.3) **Assessment.** The state department of revenue shall carefully consider all reports made pursuant to section 84-2302 and all other facts and evidence collected and available, and shall fix the valuation of the property of sleeping car companies operating in the state for the purpose of levying and collecting license taxes thereon, as hereinafter provided.

History: En. Sec. 3, Ch. 64, L. 1923; amd. Sec. 121, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-2304. (2315.4) **Method of determining valuation.** (1). * * * [Same as parent volume.]

(2) The department shall then divide the amount so obtained by the total car mileage on railroads over which the company did business to obtain the value per car mile, and shall then multiply the value per car mile thus obtained by the total number of car miles within this state. The result shall be taken and considered as the actual value of the property of such company subject to the license tax in this state, subject to review as provided in section 84-2305.

History: En. Sec. 4, Ch. 64, L. 1923; amd. Sec. 122, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the beginning of subsection (2).

84-2305. (2315.5) **Notice of hearing concerning valuation—right to appear and be heard.** The department shall thereupon give notice to the officer of such company attesting its report of the time and place such company may appear and be heard in respect to such valuation to be made upon its property. After such hearing the department may make such changes in its valuation as shall appear just and reasonable.

History: En. Sec. 5, Ch. 64, L. 1923; amd. Sec. 123, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

84-2306. (2315.6) **License tax—amount—levy—notice—payment.** The department shall thereupon levy a license tax upon the property of such sleeping car company at the rate of one and one-half per cent (1½%) on the valuation thus found by it for the use of the state, and the department shall certify such assessment and levy to the state treasurer, who shall thereupon, by registered letter, notify the officer attesting the report of such company, of the amount of the assessment, the rate of levy and the amount of the tax; and such company shall have thirty days after the mailing of such notice within which to pay said tax to the state treasurer. And such tax when paid shall be turned into the general fund of the state treasury.

History: En. Sec. 6, Ch. 64, L. 1923; amd. Sec. 124, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

Cross-References

Multistate tax compact, sec. 84-6701.

84-2307 to 84-2309. (2315.7 to 2315.9) **Repealed.**

Repeal

Sections 84-2307 to 84-2309 (Secs. 7 to 9, Ch. 64, L. 1923; Secs. 125 to 127, Ch. 516, L. 1973), relating to failure to file reports and first imposition of tax, were repealed by Sec. 5, Ch. 36, Laws 1977.

CHAPTER 24—LICENSE TAXES—STORE LICENSE

Section
84-2401. Store license from department of revenue required.
84-2402. Application and fee for license.
84-2403. Department to consider application—issuance of license.
84-2404. Expiration and renewal of licenses.
84-2405. Retailers subject to act—license fees for.
84-2407. Wholesale store licenses.
84-2410. Store defined.
84-2411. Penalty.
84-2412. Employment of help—disposal of license money.

84-2401. Store license from department of revenue required. It shall be unlawful for any person to open, establish, operate, or maintain any store or stores in this state without first having obtained a license to do so from the department of revenue, as hereinafter provided.

History: En. Sec. 1, Ch. 163, L. 1939; amd. Sec. 128, Ch. 516, L. 1973; amd. Sec. 6, Ch. 52, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

The 1977 amendment deleted "firm, corporation, association or copartnership, either foreign or domestic" after "any person"; and made minor changes in phraseology and punctuation.

Cross-References

Multistate tax compact, sec. 84-6701.

84-2402. Application and fee for license. (1) Any person or group desiring to open, establish, operate, or maintain a store in the state of Montana prior to September 1 of that calendar year shall apply to the department of revenue for license to do so. The application shall be made upon a form which shall be prescribed and furnished by the department and shall set forth the name of the owner, manager, trustee, lessee, stockholders,

receiver, or other persons desiring said license; the name of such store; the location, including street number; and all such other facts as the department may require.

(2) If the applicant desires to open, establish, operate, or maintain more than one such store, he shall make a separate application for a license to operate, maintain, open, or establish each such store.

(3) Each such application shall be accompanied by the license fee as prescribed in 84-2405 and 84-2407.

History: En. Sec. 2, Ch. 163, L. 1939; amd. Sec. 1, Ch. 122, L. 1955; amd. Sec. 9, Ch. 121, L. 1965; amd. Sec. 1, Ch. 160, L. 1971; amd. Sec. 1, Ch. 240, L. 1973; amd. Sec. 129, Ch. 516, L. 1973; amd. Sec. 7, Ch. 52, L. 1977.

Amendments

The 1971 amendment deleted from the end of the second paragraph a clause reading "but the respective stores for which the applicant desires to secure licenses may all be listed upon one (1) application blank."

Chapter 240, Laws of 1973, deleted from the end of the third paragraph a reference to former section 84-2406; and made a minor change in style.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" three times in the first paragraph.

The 1977 amendment inserted the subsection designations; deleted "firm, corporation, association, copartnership" after "Any person" at the beginning of subsection (1); and made minor changes in phraseology, punctuation and style.

84-2403. Department to consider application—issuance of license. As soon as practicable after the receipt of any such application, the state department of revenue shall carefully examine such application to ascertain whether it is in proper form and contains the necessary and requisite information. If, upon examination, the state department of revenue shall find that such application is not in proper form and does not contain the necessary and requisite information, it shall return such application for correction.

If an application is found to be satisfactory, and if the filing and license fee, as herein prescribed, shall have been paid, the state department of revenue shall issue to the applicant a license for each store for which an application for a license shall have been made.

Each licensee shall display the license so issued in a conspicuous place in the store for which such license was issued.

History: En. Sec. 3, Ch. 163, L. 1939; amd. Sec. 130, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-2404. Expiration and renewal of licenses. (1) All licenses shall be so issued so as to expire December 31 of each calendar year. On or before December 31 of each calendar year, every person having a license shall apply to the department of revenue for a renewal license for the calendar year next ensuing. All applications for a renewal shall be made upon forms which shall be prescribed and furnished by the department.

(2) Each such application for a renewal license shall be accompanied by the license fee as prescribed in 84-2405 and 84-2407.

(3) If, by December 31, an application for a renewal license for the calendar year next ensuing has not been made, the fee charged shall be 110%

of the rate prescribed in 84-2405 and 84-2407, if application is made on or before January 31 following the date of expiration. If application for renewal is made after January 31, the fee charged shall be double the rate prescribed in 84-2405 and 84-2407.

History: En. Sec. 4, Ch. 163, L. 1939; amd. Sec. 2, Ch. 122, L. 1955; amd. Sec. 10, Ch. 121, L. 1965; amd. Sec. 2, Ch. 160, L. 1971; amd. Sec. 2, Ch. 240, L. 1973; amd. Sec. 131, Ch. 516, L. 1973; amd. Sec. 8, Ch. 52, L. 1977; amd. Sec. 1, Ch. 419, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 52 and once by Ch. 419. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment substituted "thirty-first day of December of each calendar year" in the second sentence of the first paragraph for "first day of January of each year"; substituted "All licenses shall lapse on the thirty-first day of December of the year" at the beginning of the third paragraph for "No license shall lapse prior to the first day of March next following the year"; changed the application date specified in the third paragraph from March 1 to December 31; and inserted "for the calendar year next ensuing" in the third paragraph.

Chapter 240, Laws of 1973, deleted references to former section 84-2406 from the ends of the second and third paragraphs; and made minor changes in style.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" twice in the first paragraph.

Chapter 52, Laws of 1977, inserted the subsection designations; substituted "person" in the second sentence of subsection (1) for "firm, person, corporation, association, copartnership"; deleted "All licenses shall lapse on December 31 of the year for which the license was issued" at the beginning of subsection (3); and made minor changes in phraseology and style.

Chapter 419, Laws of 1977, substituted "110% of the rate" in the first sentence of subsection (3) for "double the rate"; added "if application is made on or before January 31 following the date of expiration" to the first sentence of subsection (3); added the last sentence; and made a minor change in style.

84-2405. Retailers subject to act—license fees for. (1) Every person or group opening, establishing, operating, or maintaining one or more retail stores or mercantile establishments within this state under the same general management, supervision, or ownership, where a stock of goods is maintained during any portion of the year regardless of whether the stock is held by ownership, consignment, agency, or any other means, shall pay the license fee hereinafter prescribed for the privilege of opening, establishing, operating, or maintaining such stores or mercantile establishments, provided that the members of any group, association, or consumer cooperative composed of independent units owning their own business and grouped or associated together by agreement or otherwise for the purpose of purchasing or selling merchandise or service for the mutual benefit of the members shall not be grouped for computing the license fee to be paid by the person or retailer under this act, but the units or members shall be taxed as individual units. The license fee herein prescribed shall be paid annually.

(2) The annual license fees herein prescribed for retail stores or mercantile establishments which have gross receipts in excess of $350,000 per year shall be as follows:

(a) Upon one store, the annual license fee shall be $11.

(b) Upon the second store, the annual license fee shall be $56.

(c) Upon the third store, the annual license fee shall be $106.

(d) Upon the fourth store, the annual license fee shall be $156.

(e) Upon the fifth store and on each store in excess of five stores, the annual license fee shall be $206.

(3) The annual license fees herein prescribed for retail stores or mercantile establishments which do not have gross receipts in excess of $350,000 per year shall be as follows:

(a) Upon one store, the annual license fee shall be $11.

(b) Upon the second store, the annual license fee shall be $13.50.

(c) Upon the third store, the annual license fee shall be $21.

(d) Upon the fourth store, the annual license fee shall be $28.50.

(e) Upon the fifth store, the annual license fee shall be $36.

(f) Upon the sixth store and each store in excess of six, the annual license fee shall be $44.50.

(4) For the purpose of determining the number of stores or units in the chain, all stores or units in the chain shall be included regardless of size even though one or more stores or units may be included in a different category for this license, provided the larger stores or units shall be counted last.

History: En. Sec. 5, Ch. 163, L. 1939; amd. Sec. 11, Ch. 121, L. 1965; amd. Sec. 3, Ch. 240, L. 1973; amd. Sec. 1, Ch. 200, L. 1974; amd. Sec. 9, Ch. 52, L. 1977.

Amendments

The 1973 amendment deleted from the end of the first paragraph a proviso excluding businesses licensed under former section 84-2406; increased licensing fees in each category by five dollars; and made minor changes in style and phraseology.

The 1974 amendment inserted "for retail stores or mercantile establishments which have gross receipts in excess of three hundred fifty thousand dollars ($350,000) per year" in the introductory phrase in the third paragraph; added the fourth paragraph relating to fees for stores or establishments with gross receipts less than $350,000; and added the final paragraph.

The 1977 amendment inserted the subsection designations; deleted "firm, corporation, association, copartnership" after "person" in two places in subsection (1); redesignated the subdivisions in subsection (2) from 1 through 5 to (2)(a) through (2)(e); redesignated the subdivisions in subsection (3) from 1 through 6 to (3)(a) through (3)(f); and made minor changes in phraseology, punctuation and style.

84-2406. Repealed.

Repeal

Section 84-2406 (Sec. 6, Ch. 163, L. 1939; amd. Sec. 12, Ch. 121, L. 1965), relating to the business establishments required to procure licenses and the fees therefor, was repealed by Sec. 7, Ch. 240, Laws 1973.

84-2407. Wholesale store licenses. Wholesale stores shall be taxed in all cases as individual units at the rate of forty-three dollars and fifty cents ($43.50) per unit, regardless of ownership; but, whenever goods, wares, and merchandise are sold regularly at both wholesale and retail from one establishment, the operator thereof shall pay the license fee required under section 84-2405 for the conduct of a retail store, in addition to the wholesale license herein provided for.

History: En. Sec. 7, Ch. 163, L. 1939; amd. Sec. 13, Ch. 121, L. 1965; amd. Sec. 4, Ch. 240, L. 1973.

Amendments

The 1973 amendment increased the tax on individual units from $38.50 to $43.50; and deleted a reference to former section 84-2406 near the end of the section.

84-2410. Store defined. The term "store" as used in this act shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are owned, operated, maintained, or controlled by the same person or group in which goods, wares, or merchandise of any kind are sold, either at retail or wholesale, and subject to the classification contained in 84-2405 and 84-2407. Vending machines shall not be considered as places of business per se and are not required to be licensed under the provisions of this act.

History: En. Sec. 10, Ch. 163, L. 1939; amd. Sec. 3, Ch. 160, L. 1971; amd. Sec. 5, Ch. 240, L. 1973; amd. Sec. 10, Ch. 52, L. 1977.

Amendments

The 1971 amendment added the second sentence.

The 1973 amendment deleted a reference at the end of the first sentence to former section 84-2406.

The 1977 amendment substituted "the same person or group" in the first sentence for "the same person, firm, corporation, association, copartnership, or group, either domestic or foreign"; and made minor changes in punctuation and style.

84-2411. Penalty. Any person or group who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum of not less than $25 or more than $200, and each day that such violation shall continue shall constitute a separate and distinct offense.

History: En. Sec. 11, Ch. 163, L. 1939; amd. Sec. 11, Ch. 52, L. 1977.

Amendments

The 1977 amendment deleted "firm, corporation, association, copartnership" after "Any person" at the beginning of the section; and made minor changes in phraseology, punctuation and style.

84-2412. Employment of help—disposal of license money. The department of revenue may employ such clerical and field assistance as necessary to carry out and administer the provisions of this act. All money collected under the provisions of this act shall be paid into the state treasury, with $5 of the fee collected from each store license sold credited to an earmarked revenue fund for administration of Title 51, chapter 5, by the department of business regulation and the rest to the credit of the general fund.

History: En. Sec. 12, Ch. 163, L. 1939; amd. Sec. 1, Ch. 266, L. 1971; amd. Sec. 6, Ch. 240, L. 1973; amd. Sec. 132, Ch. 516, L. 1973; amd. Sec. 19, Ch. 265, L. 1977; amd. Sec. 28, Ch. 518, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 265 and once by Ch. 518. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment deleted "less the expenses incurred in the administration of this act" after "of this act" in the second sentence.

Chapter 240, Laws of 1973, inserted "with five dollars ($5) of the fee collected from each store license sold credited to an earmarked revenue fund for administration of the Unfair Practices Act by the department of business regulation and the rest" at the end of the second sentence.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization."

Chapter 265, Laws of 1977, substituted "Title 51, chapter 1" in the second sentence for "the Unfair Practices Act"; and made minor changes in phraseology, punctuation and style.

Chapter 518, Laws of 1977, substituted "chapter 5, Title 51" in the second sentence for "the Unfair Practices Act"; and made minor changes in phraseology, punctuation and style.

Repealing Clauses

Section 7 of Ch. 240, Laws 1973 read

"Section 84-2406, R. C. M. 1947, is repealed."

Section 20 of Ch. 265, Laws 1977 read "Sections 66-214, 66-215, 66-217, and 66-218, R. C. M. 1947, are repealed."

Section 29 of Ch. 518, Laws 1977 read "Sections 51-101, 51-101.1, 51-103, 51-105, 51-112, 51-118, 51-401, 51-403, 51-404, 51-405, 51-406, 51-407, 51-408, 51-409, 51-410, 51-412, and 51-414, R. C. M. 1947, are repealed."

CHAPTER 25—LICENSE TAXES—TELEGRAPH COMPANIES

(Repealed—Section 5, Chapter 36, Laws of 1977; Section 1, Chapter 40, Laws 1977)

84-2501 to 84-2508. (2355.1 to 2355.8) Repealed.

Repeal

Sections 84-2501 to 84-2508 (Secs. 1 to 8, Ch. 41, Ex. L. 1933; Secs. 1, 2, Ch. 157, L. 1935; Secs. 133 to 137, Ch. 516, L. 1973), relating to telegraph license tax, were repealed by Sec. 1, Ch. 40, Laws 1977 and sections 84-2504 and 84-2506 to 84-2508 were repealed by Sec. 5, Ch. 36, Laws 1977.

CHAPTER 26—LICENSE TAXES—TELEPHONE COMPANIES

Section
84-2601. Annual tax levied on gross income of telephone business.
84-2602. Statement and payment on gross income—certain business excluded.
84-2603. Department to adopt rules.
84-2605. Taxpayer to keep records.

84-2601. Annual tax levied on gross income of telephone business. That on and after the first day of April, 1969, there is hereby levied and shall be collected an annual tax of one and seven hundred twenty-five thousandths per cent (1.725%) of the gross income, in excess of two hundred fifty dollars ($250) quarterly, derived from any telephone business within this state including the transmission of telephone messages in this state, over telephone lines or by microwave electronic equipment, in this state owned by any person, association or corporation; provided, however, that no bill, statement or account rendered or given any customer shall set out or contain, as a separate item, any amount on account or by reason of the license tax imposed by this act. Such annual license tax shall be paid in quarterly installments for the quarters ending respectively March 31, June 30, September 30, and December 31, in each year.

History: En. Sec. 1, Ch. 94, L. 1937; amd. Sec. 1, Ch. 41, L. 1947; amd. Sec. 1, Ch. 213, L. 1957; amd. Sec. 1, Ch. 7, Ex. L. 1969; amd. Sec. 1, Ch. 326, L. 1971.

Amendments

The 1969 amendment inserted a proviso increasing the rate of tax from 1½% to 1.725% for the two taxable years commencing on or after April 1, 1969.

The 1971 amendment made the 1969 increase permanent by substituting "1969" for "1957," changing the rates in the body of the section and deleting the proviso inserted by the 1969 amendment; and inserted "or by microwave electronic equipment."

Cross-References

Multistate tax compact, sec. 84-6701.

84-2602. Statement and payment on gross income—certain business excluded. Each and every person, association or corporation liable to tax under this act engaged in carrying on such telephone business in this state shall, within sixty (60) days after the end of each quarter, beginning with the quarter ending June 30, 1969, make out in duplicate and file

with the state department of revenue, under oath, a statement in such form as the state department of revenue may require and prescribe, showing the total gross income of such person, association or corporation derived from the telephone business within this state including the transmission of telephone messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telephone messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within this state and from those originating within but terminating outside this state during the preceding quarter, and containing such other information as the state department of revenue may require; and shall accompany such statement with the payment to the state department of revenue of a license tax in the amount equal to one and seven hundred twenty-five thousandths per cent (1.725%).

History: En. Sec. 2, Ch. 94, L. 1937; amd. Sec. 2, Ch. 213, L. 1957; amd. Sec. 2, Ch. 7, Ex. L. 1969; amd. Sec. 2, Ch. 326, L. 1971; amd. Sec. 138, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "June 30, 1969" for "September 30, 1957" and added a proviso increasing the rate from 1½% to 1.725% for the two taxable years commencing on or after April 1, 1969.

The 1971 amendment made the 1969 increase permanent by substituting the 1969 tax rate in the body of the section and deleting the proviso added in 1969, and corrected a typographical error.

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

Effective Dates

Section 3 of Ch. 7, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19,1969.

Section 3 of Ch. 326, Laws 1971 read "This act is effective on April 1, 1971."

84-2603. Department to adopt rules. The state department of revenue shall have the power, and it shall be its duty from time to time to adopt, publish and enforce such rules and regulations not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this act.

History: En. Sec. 3, Ch. 94, L. 1937; amd. Sec. 139, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-2604. Repealed.

Repeal

Section 84-2604 (Sec. 4, Ch. 94, L. 1937), relating to delinquency penalty, was repealed by Sec. 5, Ch. 36, Laws 1977.

84-2605. Taxpayer to keep records. Each person, association or corporation liable to tax under this act shall keep a record in such form as the state department of revenue shall require showing the total gross receipts, as herein described, and such other information as the state department of revenue may require.

History: En. Sec. 5, Ch. 94, L. 1937; amd. Sec. 140, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

84-2606 to 84-2608. Repealed.

Repeal

Sections 84-2606 to 84-2608 (Secs. 6 to 8, Ch. 94, L. 1937; Secs. 141, 142, Ch. 516, L. 1973), relating to failure to make statements and inspection of books, were repealed by Sec. 5, Ch. 36, Laws 1977.

CHAPTER 30—LICENSES—ITINERANT MERCHANTS

Section
84-3001 to 84-3015. [Transferred.]

84-3001 to 84-3015. [Transferred.]

Compiler's Notes

Sections 144 to 158, Ch. 218, Laws of 1974 renumbered these sections as secs. 3-3201 to 3-3215.

CHAPTER 31—LICENSES—ITINERANT VENDORS

84-3101. (2429) **License of itinerant vendor of drugs, etc.**

Cross-References

Multistate tax compact, sec. 84-6701.

CHAPTER 32—LICENSES—MISCELLANEOUS—COUNTY

Section
84-3206. Laundries.

84-3201. (2434) **Billiard tables—pawnbrokers—theaters, etc.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-3202. (2435) **Railways acting as warehouses.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-3203. (2436) **License of manufacturer of soft drinks.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-3204. (2438) **Keeper of skating rink or merry-go-round.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-3205. (2439) **Moving picture shows—amount of license.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-3206. (2440) **Laundries.** Every person engaged in laundry business, other than the steam-laundry business, shall pay a license of ten dollars per quarter; provided, that this act shall not apply to persons engaged in a laundry business where not more than two persons are engaged or employed or kept at work, and said license shall be for one place of business only.

History: En. Sec. 4, p. 200, L. 1897; re-en. Sec. 2776, Rev. C. 1907; re-en. Sec. 2440, R. C. M. 1921; amd. Sec. 43, Ch. 535, L. 1975.

Amendments

The 1975 amendment substituted "persons engaged in a laundry business where not more than two persons" for "the women engaged in the laundry business, where not more than two women."

84-3207. (2441) **Architects, builders, contractors, manufacturers.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-3208. (2442) **Manufacturers of malt.**

Cross-References

Multistate tax compact, sec. 84-6701.

CHAPTER 34—LICENSES—PRODUCE WHOLESALERS

Section
84-3402 to 84-3408. [Transferred.]
84-3410. [Transferred.]
84-3413 to 84-3416. [Transferred.]

84-3401. (2443.1) **Repealed.**

Repeal

Section 84-3401 (Sec. 1, Ch. 164, L. 1933), defining a produce wholesaler, was repealed by Sec. 173, Ch. 218, Laws of 1974.

84-3402 to 84-3408. [Transferred.]

Compiler's Notes

Sections 159 to 165, Ch. 218, Laws of 1974, renumbered these sections as Secs. 3-3301 to 3-3307.

84-3409. (2443.9) **Repealed.**

Repeal

Section 84-3409 (Sec. 9, Ch. 164, L. 1933), relating to the record of proceedings and hearings before the commissioner, was repealed by Sec. 173, Ch. 218, Laws of 1974.

84-3410. [Transferred.]

Compiler's Notes

Section 166, Ch. 218, Laws of 1974 renumbered this section as sec. 3-3308.

84-3411, 84-3412. (2443.11, 2443.12) **Repealed.**

Repeal

Sections 84-3411 and 84-3412 (Secs. 11, 12, Ch. 164, L. 1933), relating to appeals from decisions of the commissioner, were repealed by Sec. 173, Ch. 218, Laws of 1974.

84-3413 to 84-3416. [Transferred.]

Compiler's Notes

Sections 167 to 170, Ch. 218, Laws of 1974 renumbered these sections as secs. 3-3309 to 3-3312.

CHAPTER 35—LICENSES—PUBLIC CONTRACTORS

Section
84-3501. Definitions.
84-3502. Unlawful to engage in public contracting business without license.
84-3503. State department of revenue as registrar.
84-3505. Classes of licenses—rights granted under licenses—fees.
84-3507. Bids to show bidder is licensed, is not presently working overtime on any incomplete contract, and class of bid.
84-3508. Disposal of fees.

84-3510. Complaints against licensee—grounds—investigation—hearing—suspension of license—appeals.
84-3512. Penalty for acting without license.
84-3513. Retention of contract payments to pay assessments—transmittal to department of revenue—contractor to pay when funds not retained—refunds.
84-3514. Corporate license tax credit—additional license fees—treatment of personal property tax as credit.
84-3515. State department of revenue to establish rules and regulations.
84-3516. Failure to file contractor's license—penalty.

84-3501. (2433.1) **Definitions.** The following words, terms, and phrases in this act are, for the purposes hereof, defined as follows:

(1) A "public contractor" within the meaning of this act shall include any person who submits a proposal to or enters into a contract for performing all public construction work in the state with the federal government. state of Montana, or with any board, commission, or department thereof or with any board of county commissioners or with any city or town council or with any agency of any thereof or with any other public board, body, commission, or agency authorized to let or award contracts for any public work when the contract cost, value, or price thereof exceeds the sum of $1,000.

(2) The term "public contractor" includes subcontractors undertaking to perform the work covered by the original contract or any part thereof, the contract cost, value, or price of which exceeds the sum of $1,000.

(3) "Gross receipts" means all receipts from sources within the state, whether in the form of money, credits, or other valuable consideration, received from, engaging in, or conducting a business, without deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, taxes, losses, or any other expense whatsoever. However, "gross receipts" shall not include cash discounts allowed and taken on sales and sales refunds, either in cash or by credit, uncollectible accounts written off from time to time, or payments received in final liquidation of accounts included in the gross receipts of any previous return made by the person.

History: En. Sec. 1, Ch. 178, L. 1935; amd. Sec. 1, Ch. 195, L. 1967; amd. Sec. 12, Ch. 52, L. 1977.

Amendments

The 1967 amendment in subsection (b) inserted "for performing all public construction work in the state" after "into a contract"; inserted "federal government" before "state of Montana"; deleted "the construction or reconstruction" after "award contracts for"; and added subsection (d).

The 1977 amendment deleted a former subsection (a) which read "The word 'person' includes any individual, firm, copartnership, association, corporation or other group or combination acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is clearly disclosed by the context hereof"; redesignated former subsections (b) through (d) as subsections (1) through (3); and made minor changes in phraseology, punctuation and style.

84-3502. (2433.2) **Unlawful to engage in public contracting business without license.** It shall be unlawful for any person or any combination of persons to engage in the business or act in the capacity of public contractor as herein defined within the state of Montana without having a license therefor as herein provided.

History: En. Sec. 2, Ch. 178, L. 1935; amd. Sec. 13, Ch. 52, L. 1977.

Amendments

The 1977 amendment deleted "From and

after the passage and approval of this act" at the beginning of the section; deleted "firm, copartnership, corporation, association" after "any person" near the beginning of the section; and made minor changes in phraseology and punctuation.

84-3503. (2433.3) **State department of revenue as registrar.** The state department of revenue of the state of Montana is hereby constituted the registrar for the purpose of this act, and is empowered to employ such assistance and to procure such records, supplies and equipment as may be necessary to carry out its provisions.

History: En. Sec. 3, Ch. 178, L. 1935; amd. Sec. 143, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-3505. (2433.5) **Classes of licenses—rights granted under licenses—fees.** (1) There shall be three (3) classes of licenses issued under the provisions of this act; and such classes of licenses are hereby designated as Classes A, B, and C. Any applicant for a license under the provisions hereof, shall specify in his application the class of license applied for.

(2) The holder of a Class A license shall be entitled to engage in the public contracting business within the state of Montana without any limitation as to the value of a single public contract project, subject, however, to such prequalification requirements as may be imposed by the public body or bodies referred to in section 84-3501 (b) and at the time of making the application for such license the applicant shall pay to the registrar a fee in the sum of two hundred dollars ($200).

(3) The holder of a Class B license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of fifty thousand dollars ($50,000); and shall pay unto the registrar as a license fee the sum of one hundred dollars ($100) for such Class B license at the time of making application therefor.

(4) The holder of a Class C license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of twenty-five thousand dollars ($25,000); and shall pay unto the registrar as a license fee the sum of ten dollars ($10) at the time of making application therefor.

(5) In addition to the fees enumerated above, each public contractor shall pay to the state an additional license fee in a sum equal to one per cent (1%) of the gross receipts from public contracts during the income year for which the license is issued; provided, however, that the additional license fee hereby imposed shall not be paid upon or collectible from the gross receipts from any public contract which has been let to bid, upon which bids have been awarded, or which has been executed by a public body and a public contractor on the effective date of this act, and provided further, that the additional license fee shall be computed upon the basis of the entire contract for each separate contract let by any of the public bodies as specified in section 84-3501(b). The prime contractor shall withhold the additional one per cent (1%) license fee from pay-

ments to his sub-contractors and inform the state department of revenue, on prescribed forms, of the amount of the additional one per cent (1%) license fee in his account to be allocated and transferred to the sub-contractor. The notification to transfer portions of the additional one per cent (1%) license fee must be filed within thirty (30) days after each payment is made to sub-contractors. If any prime contractor fails to file the required allocation and transfer report at the time required by or under the provisions of this act, a penalty computed at the rate of ten per cent (10%) of the additional one per cent (1%) license fee withheld from sub-contractors shall be due from the prime contractor.

(6) Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than one thousand dollars ($1,000), nor shall any contractor be required to have a license hereunder in order to submit a bid or proposal for contracts advertised to be let by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States; neither shall a successful bidder be required to be licensed as provided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved.

History: En. Sec. 5, Ch. 178, L. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974.

Amendments

The 1967 amendment inserted the numerical subsection designations and inserted subsection (5).

The 1974 amendment added the proviso at the end of subsection (5) pertaining to the computation of the additional license fee, withholding of payments, reporting requirements, and the penalty provision.

Cross-References

Multistate tax compact, sec. 84-6701.

84-3507. (2433.7) **Bids to show bidder is licensed, is not presently working overtime on any incomplete contract, and class of bid.** All bids and proposals for the construction of any public contract project subject to the provisions of this act shall contain a statement showing that the bidder or contractor is duly and regularly licensed hereunder and is not presently working beyond the contract time, including authorized time extensions, on any previously awarded public contract project. The number and class of such license then held by such public contractor shall appear upon such bid or proposal, and no contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as hereinbefore provided, and unless the public contractor has completely executed any previous contract upon which he has worked beyond contract time.

History: En. Sec. 7, Ch. 178, L. 1935; amd. Sec. 3, Ch. 141, L. 1967.

Amendments

The 1967 amendment added "and is not presently working * * * on any previously awarded public contract project" at the end of the first sentence and added "and unless * * * he has worked beyond contract time" at the end of the second sentence.

84-3508. (2433.8) **Disposal of fees.** All moneys collected hereunder shall be deposited by the registrar with the state treasurer, who shall credit them to the general fund of the state.

History: En. Sec. 8, Ch. 178, L. 1935; amd. Sec. 2, Ch. 266, L. 1971.

Amendments

The 1971 amendment deleted the former first sentence requiring expenses to be paid from fees; and deleted "less the expense incurred in the administration of this act" after "collected hereunder."

84-3510. (2433.10) **Complaints against licensee—grounds—investigation—hearing—suspension of license—appeals.** (1) Any person or other organization may file a duly verified complaint with the registrar charging that the licensee is guilty of one or more of the following acts or omissions:

(a) abandonment of any contract without legal excuse;

(b) diversion of funds or property received under express agreement for prosecution or completion of a specific contract under this act or for a specified purpose in the prosecution or completion of any contract and their application or use for any other contract, obligation, or purpose with intent to defraud or deceive creditors or the owner;

(c) the doing of any willful fraudulent act by the licensee as a public contractor in consequence of which another is substantially injured;

(d) the making of any false statement in any application for a license or renewal thereof;

(e) the failure to comply with the provisions of 82-1926 requiring preference of products manufactured or produced in this state by Montana industry and labor.

(2) Upon the filing of such complaint, the registrar shall investigate the charge and within 60 days after the filing of such complaint shall render and file said registrar's decision with said registrar's reasons therefor. If the registrar's decision be that the licensee has been guilty of any of such acts or omissions, said registrar shall suspend the contractor's license. At any time within 20 days thereafter the complainant or the contractor may petition the registrar for a rehearing. In the order granting or denying such rehearing, the registrar shall set forth a statement of the particular grounds and reasons for said registrar's actions on such petition and shall mail a copy of such order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a rehearing be granted, the registrar shall set the matter for further hearing on due notice to the parties and, within 30 days after submission of the matter, serve said registrar's decision after rehearing in like manner as an original decision.

(3) The filing of such petition for rehearing as to the registrar's actions in suspending or canceling such license shall suspend the operation of such action and permit the licensee to continue to do business as a public contractor pending final determination of the controversy.

(4) Within 30 days after the decision on rehearing, any party aggrieved by such decision of the registrar may appeal therefrom to the district court in and for the county in which the licensee under this act resides or does business as a public contractor by serving upon the registrar a notice of such appeal. The matter shall thereupon be heard de novo by the district court. An appeal may be taken from the decision of the district court in the same manner as appeals in other civil cases.

(5) In all cases where the licensee has filed his notice of appeal from the decision of the registrar or from the decision of the district court, such

licensee shall be entitled to continue to do business as a public contractor pending final decision of the controversy.

History: En. Sec. 10, Ch. 178, L. 1935; amd. Sec. 1, Ch. 219, L. 1969; amd. Sec. 14, Ch. 52, L. 1977.

Amendments

The 1969 amendment inserted item (5). The 1977 amendment inserted the subsection designations; deleted "firm, copartnership, corporation, association" after "Any person" at the beginning of subsection (1); redesignated former subdivisions (1) through (5) as subdivisions (1)(a) through (1)(e); and made minor changes in phraseology, punctuation and style.

84-3512. (2433.12) **Penalty for acting without license.** Any person or other organization acting in the capacity of public contractor within the meaning of this act without a license as herein provided shall be guilty of a misdemeanor and shall upon conviction thereof, if an individual, be punished by a fine of not to exceed $500 or by imprisonment in the county jail for a term not to exceed 6 months or by both such fine and imprisonment, in the discretion of the court. The same penalties shall apply upon conviction to any member of a partnership or to any construction, managing, or directing officer of any corporation or other organization consenting to, participating in, or aiding or abetting any such violation of this act.

History: En. Sec. 12, Ch. 178, L. 1935; amd. Sec. 15, Ch. 52, L. 1977.

Amendments

The 1977 amendment deleted "firm, copartnership, corporation, association" after "Any person" at the beginning of the section; substituted "partnership" in the last sentence for "copartnership"; and made minor changes in phraseology, punctuation and style.

84-3513. Retention of contract payments to pay assessments—transmittal to department of revenue—contractor to pay when funds not retained—refunds. The state, county, city or any agency or department thereof, as described in section 84-3501 (b), for whom the contractor is performing public work, shall withhold, in addition to other amounts withheld as provided by law, one per cent (1%) of all payments due the contractor and shall transmit such moneys to the state department of revenue. In the event that the one per cent (1%) of gross receipts is not withheld as provided, the contractor shall make payment of these amounts to the state department of revenue within thirty (30) days after the date on which the contractor receives each increment of payment for work performed by the contractor. Any overpayment of the one per cent (1%) of gross receipts withheld, or paid by any contractor hereunder, shall be refunded by the state department of revenue at the end of the income year upon written application therefor.

History: En. Sec. 3, Ch. 195, L. 1967; amd. Sec. 144, Ch. 516, L. 1973.

Title of Act

An act providing for additional public contractors' license fees for all public construction work in Montana, defining terms, prescribing method of collection and disposition of fees, allowing a credit on corporation or income tax and personal property taxes paid in Montana by licensees on personal property used in licensees' contracting business, providing a penalty and an effective date; amending sections 84-3501 and 84-3505, R. C. M. 1947.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

Constitutionality

This act imposing a 1% gross receipts tax is constitutional; it does not violate Art. XII, § 11 of the 1889 Constitution since the classification of public contractors separately from private contrac-

tors is reasonable; it does not discriminate against the federal government, interfere with its functions or violate its immunity from taxation. Peter Kiewit Sons' Co. v. State Board of Equalization, — M —, 505 P 2d 102, distinguished in — M —, 507 P 2d 1040, 1045.

84-3514. Corporate license tax credit—additional license fees—treatment of personal property tax as credit. The additional license fees withheld or otherwise paid as provided herein may be used as a credit on the contractor's corporation license tax provided for in Title 84, chapter 15, R.C.M. 1947, or on the contractor's income tax provided for in Title 84, chapter 49, R.C.M. 1947, depending upon the type of tax the contractor is required to pay under the laws of the state.

Personal property taxes paid in Montana on any personal property of the contractor which is used in the business of the contractor and is located within this state may be credited against the license fees required under this act. However, in computing the tax credit allowed by this act against the contractor's corporation license tax or income tax, the personal property tax credit against the licensee fees herein required shall not be considered as license fees paid for the purpose of such income tax or corporation license tax credit.

History: En. Sec. 4, Ch. 195, L. 1967.

84-3515. State department of revenue to establish rules and regulations. The state department of revenue shall establish rules and regulations necessary for the effective implementation of the provisions of this act, including, but not limited to, requiring public contractors to file a contractor's return showing public works contracts performed during a calendar year.

History: En. Sec. 5, Ch. 195, L. 1967; amd. Sec. 145, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-3516. Failure to file contractor's license—penalty. A person failing to file a contractor's license return as provided and required by the state department of revenue, upon conviction, shall be fined not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000).

History: En. Sec. 6, Ch. 195, L. 1967; amd. Sec. 146, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

Effective Date

Section 7 of Ch. 195, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

CHAPTER 37—LICENSES—TRANSIENT RETAIL MERCHANTS

84-3702. (2429.2) **Amount of license.**

Cross-References

Multistate tax compact, sec. 84-6701.

CHAPTER 38—LEVY OF TAXES

Section
84-3803. Rate of taxation fixed by state department.
84-3804. Increase of state tax levy—support of public educational institutions subject to board of regents supervision—library systems.
84-3806. Failure of county commissioners to levy.
84-3808. Tax on personal property lien on realty—separate assessment.
84-3809. Tax upon real property and tax on improvements a lien upon both.
84-3811. Limitation on levy and computation of tax in new taxing jurisdictions.

84-3801. (2147) The levy.

Cross-References

Multistate tax compact, sec. 84-6701.

84-3803. (2149) **Rate of taxation fixed by state department.** The state department of revenue must, for state purposes, for each fiscal year fix an ad valorem rate of taxation upon each $100 of taxable property of the state, after allowing 6% for delinquencies in the taxes and for costs of collection thereof, as will raise a sufficient amount to meet the levy of the legislature for each fiscal year.

History: En. Sec. 3824, Pol. C. 1895; re-en. Sec. 2597, Rev. C. 1907; re-en. Sec. 2149, R. C. M. 1921; amd. Sec. 147, Ch. 516, L. 1973; amd. Sec. 2, Ch. 345, L. 1977. Cal. Pol. C. Sec. 3713.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

The 1977 amendment reduced the rate for delinquencies from 12% to 6%; and made minor changes in phraseology and style.

84-3804. Increase of state tax levy—support of public educational institutions subject to board of regents supervision—library systems. (1) Upon the approval of the electors of this state, to be determined by their vote at the general election to be held in November of 1968, the legislative assembly shall levy a property tax of not more than six (6) mills on the taxable value of all real and personal property each year for ten (10) years beginning with the year 1969. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system and other public educational institutions subject to board of regents supervision. The board of regents may, at their discretion, allocate up to three (3) mills of the six (6) mill levy from the community college district in which the community college is located for the support and maintenance of the community college districts.

(2) Upon approval of the electors of this state to be determined by their vote at the general election to be held in November, 1976, the legislature shall levy a property tax of not more than one (1) mill on the taxable value of all real and personal property each year for ten (10) years beginning with the year 1977. All revenue from this property tax levy shall be appropriated to the state library commission for the support of public library federations.

History: En. Sec. 1, Ch. 50, L. 1967. Referendum No. 65, approved at election Nov. 5, 1968; amd. Sec. 52, Ch. 100, L. 1973; amd. Sec. 74, Ch. 405, L. 1973; amd. Sec. 1, Ch. 218, L. 1975; amd. Sec. 6, Ch. 416, L. 1975.

Compiler's Notes

This section is substituted for Sec. 1, Ch. 218, Laws 1957 and given the same section number as it covers the same subject matter.

This section was amended twice in 1975,

once by Ch. 218 and once by Ch. 416. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Both 1973 amendments deleted "in addition to any levy authorized by section 9, article XII of the Montana constitution" after "levy a property tax" in the first sentence.

Chapter 218, Laws of 1975, inserted "and other public educational institutions subject to board of regents supervision" at the end of the second sentence in subsection (1); and added the third sentence of subsection (1).

Chapter 416, Laws of 1975, inserted the subsection (1) designation; and added subsection (2).

Temporary Provision

Chapter 478, Laws of 1973, levied 6 mills for each of the years 1973 and 1974.

Tax Levy for Montana University System

Chapter 376, Laws of 1977, read "Section 1. Tax levy for first year. For the year 1977 there is levied upon the taxable value of all real and personal property in the state of Montana, subject to taxation for the year 1977, 6 mills or so much thereof as is necessary to raise the amount appropriated by the legislature from the earmarked revenue fund for the support, maintenance, and improvement of the Montana university system and other public educational institutions subject to board of regents' supervision.

"Section 2. Tax levy for second year. For the year 1978 there is levied upon the taxable value of all real and personal property in the state of Montana, subject to taxation for the year 1978, 6 mills or so much thereof as is necessary to raise the amount appropriated by the legislature from the earmarked revenue fund for the support, maintenance, and improvement of the Montana university system and other public educational institutions subject to board of regents' supervision.

"Section 3. Purpose of tax levies. The levies made by sections 1 and 2 of this act are for the support, maintenance, and improvement of the Montana university system and other public educational institutions subject to board of regents' supervision, as provided in referendum measure No. 65 passed by vote of the people at the general election held November 5, 1968; and the funds raised therefrom shall be deposited in the earmarked revenue fund."

Statute Not Self-executing

Where legislature failed to make tax levy for support of university system in 1975 and 1976 as authorized by this section and the referendum held under this section, there was no levy and appropriation of money from fund was invalid. Connick v. Judge, — M —, 538 P 2d 1024.

84-3806. (2151) **Failure of county commissioners to levy.** The action of the state department of revenue in fixing the rate of taxation for state purposes is, in the absence of action by the board of county commissioners, a valid levy of the rate so fixed, and imposes upon the county commissioners, and all other officers charged with the performance of any duties under the revenue law, the same obligations as if the board of county commissioners had made the levy at the proper time.

History: En. Sec. 3826, Pol. C. 1895; re-en. Sec. 2599, Rev. C. 1907; re-en. Sec. 2151, R. C. M. 1921; amd. Sec. 148, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3715.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-3808. (2153) **Tax on personal property lien on realty—separate assessment.** (a). Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner thereof, from and after 12 midnight of the first day of January in each year.

(b). The taxes upon personal property based upon a taxable value up to and including one thousand dollars ($1000) shall be a first and prior lien

upon the real property of the owner of such personal property; taxes upon personal property based upon the taxable value thereof in excess of one thousand dollars ($1000) shall be a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon said real property appearing of record in the office of the clerk and ex officio recorder of the county where such real property is situated at or before the time such personal property tax attached thereto shall have filed the notice hereinafter provided for, in which event the taxes upon such excess of one thousand dollars ($1000), of taxable value shall not be a lien on the real property of such owner. It shall be the duty of the county treasurer to issue to any mortgagee or lien holder, upon his request, a statement of the personal property tax due upon the taxable value up to and including one thousand dollars ($1000); and personal property taxes upon a taxable value up to one thousand dollars ($1000) may be paid, redeemed from a tax sale as by law provided, or discharged separate from any personal property taxes in excess of such amount. Payment of such taxes upon a taxable value up to one thousand dollars ($1000) as herein provided, shall operate to discharge the tax lien upon the personal property of the owner to the extent of such payment in the order that the person paying such tax shall direct.

(c). The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file in the office of the county treasurer of said county a notice giving;

(1) to (6) * * * [Same as parent volume.]

(d). Provided, that any owner of a mortgage on real estate upon which personal property taxes are by this act made a lien, and where the owner of such real estate and personal property has failed to pay taxes due upon such real estate and personal property for one or more years, may file with the department of revenue or its agent in the county in which such property is located a written request to have the personal property and real estate of the owner separately assessed. Such request must be made by registered mail at least ten (10) days prior to the first day of January in the year for which property is assessed. Upon receipt by the department of revenue or its agent of such request, it is hereby made the duty of the department of revenue or its agent to make a separate assessment of real and personal property of the owner thereof and such personal taxes shall not be a lien upon the real estate so mortgaged of the owner thereof and the said personal property taxes shall be collected in the manner provided by law for other personal property.

History: En. Sec. 3828, Pol. C. 1895; re-en. Sec. 2601, Rev. C. 1907; re-en. Sec. 2153, R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1925; amd. Sec. 1, Ch. 113, L. 1927; amd. Sec. 1, Ch. 182, L. 1933; amd. Sec. 1, Ch. 119, L. 1935; amd. Sec. 1, Ch. 97, L. 1937; amd. Sec. 75, Ch. 405, L. 1973; amd. Sec. 12, Ch. 388, L. 1975. Cal. Pol. C. Sec. 3717.

Amendments

The 1973 amendment deleted "in the office of the county assessor and" following "shall file" in the preliminary clause of subsection (c); and substituted references to the department of revenue or its agent for references to the county assessor in subsection (d).

The 1975 amendment substituted "12 midnight of the first day of January" for "12 m. of the first Monday in March" at the end of subsection (a); substituted "first day of January" for "first Monday in March" in the second sentence of subsection (d); and made minor changes in style.

84-3809. (2154) **Tax upon real property and tax on improvements a lien upon both.** Every tax due upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to others than the owner of the real estate is a lien upon the land and improvements; which several liens attach as of the first day of January in each year.

History: Ap. p. Sec. 1714, 5th Div. Comp. Stat. 1887; amd. Sec. 83, p. 105, L. 1891; amd. Sec. 3829, Pol. C. 1895; re-en. Sec. 2602, Rev. C. 1907; re-en. Sec. 2154, R. C. M. 1921; amd. Sec. 13, Ch. 388, L. 1975. Cal. Pol. C. Sec. 3718.

Amendments

The 1975 amendment substituted "first day of January" for "first Monday of March."

84-3811. Limitation on levy and computation of tax in new taxing jurisdictions. The department may not be required to levy or compute a tax for any new taxing jurisdiction created unless formally notified of its creation by January 1 of the year in which the taxes are to be levied.

History: En. 84-3811 by Sec. 1, Ch. 349, L. 1977.

Title of Act

An act to limit the department of revenue's obligation to compute or levy a tax on any new taxing jurisdiction created after January 1 of each year.

CHAPTER 39—UNIFORM FEDERAL TAX LIEN REGISTRATION ACT

(Repealed—Section 8, Chapter 228, Laws of 1967)

84-3901 to 84-3907. (2155.1 to 2155.7) **Repealed.**

Repeal

These sections (Secs. 1 to 7, Ch. 8, L. 1927), the Uniform Federal Tax Lien Registration Act, were repealed by Sec. 8, Ch. 228, Laws 1967. **For present law, see secs. 45-1501 to 45-1507.**

CHAPTER 40—COMPUTATION AND ENTRY OF TAXES

Section

84-4001. Department of revenue or its agent to enter valuations on assessment book.
84-4002. County clerk to prepare duplicate statement.
84-4003. Statement to be transmitted to state auditor and state department of revenue.
84-4004. County clerk to follow directions of state department of revenue, county or state tax appeal boards.
84-4005. Department of revenue or its agent to compute and enter taxes—affidavit.
84-4006. County clerk's affidavit—delivery of book to department of revenue or its agent.
84-4013. State department of revenue may dispense with duplicate.

84-4001. (2156) **Department of revenue or its agent to enter valuations on assessment book.** Before delivering the assessment book to the county clerk as required by section 84-505 the department of revenue or its agent must proceed to add up the valuations, and enter the total valuation of each kind of property, and the total valuation of all property, on the assessment book. The column of acres must show the total acreage of the county.

History: En. Sec. 85, p. 105, L. 1891; re-en. Sec. 3840, Pol. C. 1895; re-en. Sec. 2604, Rev. C. 1907; re-en. Sec. 2156, R. C. M. 1921; amd. Sec. 1, Ch. 167, L. 1943; amd. Sec. 76, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3727.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "assessor."

84-4002. (2157) **County clerk to prepare duplicate statement.** The county clerk shall, on or before the second Monday in August of each year, prepare from the assessment book of such year, as corrected by the department of revenue or its agent, duplicate statements, showing in separate columns:

(1) the total value of all property;

(2) the value of real estate, including mining claims, stated separately;

(3) the value of the improvements thereon;

(4) the value of taxable personal property;

(5) the number of acres of land and the number of mining claims, stated separately.

History: En. Sec. 86, p. 105, L. 1891; re-en. Sec. 3841, Pol. C. 1895; re-en. Sec. 2605, Rev. C. 1907; re-en. Sec. 2157, R. C. M. 1921; amd. Sec. 77, Ch. 405, L. 1973; amd. Sec. 7, Ch. 126, L. 1977. Cal. Pol. C. Sec. 3728.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "board of county commissioners" in the preliminary paragraph.

The 1977 amendment substituted "taxable personal property" in subdivision (4) for "personal property, exclusive of money"; deleted a former subdivision 5 reading "The amount of money"; redesignated former subdivision 6 as subdivision (5); and made minor changes in phraseology, punctuation and style.

84-4003. (2158) **Statement to be transmitted to state auditor and state department of revenue.** The county clerk must, as soon as such statements are prepared, transmit by mail, one to the state auditor and one to the state department of revenue.

History: En. Sec. 87, p. 105, L. 1891; re-en. Sec. 3842, Pol. C. 1895; re-en. Sec. 2606, Rev. C. 1907; re-en. Sec. 2158, R. C. M. 1921; amd. Sec. 149, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3729.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

84-4004. (2159) **County clerk to follow directions of state department of revenue, county or state tax appeal boards.** As soon as the county clerk receives from the state department of revenue, county or state tax appeal boards a statement of any change or changes made by the department or boards in the assessment books of the county, or in any assessment therein contained, he must make the corresponding change or changes in the assessment books, by entering the same in a column provided with a proper heading in the assessment books, counting any fractional sum, when more than fifty cents as one dollar, and omitting it when less than fifty cents, so that the value of any separate assessment shall contain no fractions of a dollar; but he must in all cases disregard any action of the county tax appeal board which is prohibited by section 84-413; provided, however, that if such assessment books are not in the possession of the county clerk at the time he receives any such statement, he must immediately make a copy thereof, attesting the same with his seal of office, and deliver such attested copy to the county or state officer then having possession of such assessment books, and it shall be the duty of such

county or state officer to immediately make the corresponding change or changes in such assessment in the manner herein provided.

History: En. Sec. 88, p. 106, L. 1891; re-en. Sec. 3843, Pol. C. 1895; re-en. Sec. 2607, Rev. C. 1907; re-en. Sec. 2159, R. C. M. 1921; amd. Sec. 1, Ch. 86, L. 1929; amd. Sec. 78, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3730.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization; inserted references to the county and state tax appeal boards; substituted "county tax appeal board" for "board of county commissioners" before "which is prohibited by section 84-413" near the middle of the section; and inserted "or state" after "county" twice near the end of the section.

84-4005. (2160) **Department of revenue or its agent to compute and enter taxes—affidavit.** The department of revenue or its agent must then compute, and enter in a separate money column in the assessment book, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated, and foot up the columns showing the total amount of such taxes, and the columns of total value of property in the county, and shall attach thereto his affidavit, by him subscribed as follows:

"I, ..., an agent of the department of revenue do swear that I have reckoned the respective sums due as taxes, and have added up the columns of valuations, taxes and acreage, as required by law, and the said assessment book to which this affidavit is affixed is full, true and correct, and made in the manner prescribed by law," and shall on or before the second Monday of October deliver the completed assessment book to the county clerk.

History: En. Sec. 89, p. 106, L. 1891; re-en. Sec. 3844, Pol. C. 1895; re-en. Sec. 2608, Rev. C. 1907; re-en. Sec. 2160, R. C. M. 1921; amd. Sec. 3, Ch. 167, L. 1943; amd. Sec. 79, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3731.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor; and deleted "as corrected under the direction of the county and state board of equalization" after "total value of property in the county" near the end of the preliminary paragraph.

84-4006. (2161) **County clerk's affidavit—delivery of book to department of revenue or its agent.** That within five (5) days after the second Monday in August the county clerk must attach to the book the following affidavit:

"I, ..., county clerk of the county of ....., do swear that I received the assessment book of the taxable property of the county from the department of revenue or its agent with his affidavit thereto affixed, and that I have corrected it and made it conform to the requirements of the county and state tax appeal boards," and deliver the book to the department of revenue or its agent.

History: En. Sec. 90, p. 107, L. 1891; re-en. Sec. 3845, Pol. C. 1895; re-en. Sec. 2609, Rev. C. 1907; re-en. Sec. 2161, R. C. M. 1921; amd. Sec. 9, Ch. 96, L. 1923; amd. Sec. 2, Ch. 167, L. 1943; amd. Sec. 80, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3732.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor" in two places; and substituted "tax appeal board" for "board of equalization" at the end of the affidavit.

84-4011. (2166) **Repealed.**

Repeal

Section 84-4011 (Sec. 95, p. 107, L. 1891), relating to neglect of duty by clerk, was repealed by Sec. 15, Ch. 126, Laws 1977.

84-4013. (2168) **State department of revenue may dispense with duplicate.** The state department of revenue may, by an order certified to the county clerk of any county in the state, dispense with the duplicate assessment book in such county, in which event the original assessment book must perform all the offices of such duplicate, and must have like force and effect.

History: En. Sec. 4019, Pol. C. 1895; re-en. Sec. 2737, Rev. C. 1907; re-en. Sec. 2168, R. C. M. 1921; amd. Sec. 81, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization"; and deleted "entered upon its minutes" following "by an order" near the beginning of the sentence.

CHAPTER 41—COLLECTION OF GENERAL PROPERTY TAXES—TAX SALES—REDEMPTION—TAX DEEDS—SALE OF TAX DEED LANDS

Section

84-4101. Treasurer to publish notice of delinquency.
84-4116. Statement to be transmitted to the state department of revenue by the county clerk.
84-4130. Lien of state when vests in purchaser—how alone divested.
84-4155. Piecemeal redemption of land sold for taxes.
84-4166. Defense to action—redemption of parcels.
84-4169. Form of tax deed issued on filing copy of decree with treasurer.
84-4175.1. Certain unpaid taxes uncollectible—stricken from records.
84-4175.2. Treasurers to destroy certain tax records.
84-4190.1. Purpose.
84-4190.2. Definitions.
84-4191. Terms of sale—sale contract—deed of conveyance.
84-4192. Land subject to taxation to purchaser—when.
84-4192.1. Powers and duties of board regarding county lands.
84-4192.2. Limitation to lands not necessary for county business—appraisal required.
84-41-100. Validation of tax deeds notwithstanding failure to classify lands.
84-41-105. Tax prepayment—new industrial facilities.

84-4101. (2169) **Treasurer to publish notice of delinquency.** Within ten (10) days after the receipt of the assessment book, the county treasurer must publish a notice specifying:

1. * * * [Same as parent volume.]

2. The time and place at which payment of taxes may be made: And he must send to the last-known address of each taxpayer written notice, postage prepaid, showing the amount of taxes due the current year and the amount due and delinquent for other years. The written notice shall include:

(a) the taxable value of the property;

(b) the total mill levy applied to that taxable value;

(c) the value of each mill in that county;

(d) the number of the school district in which the property is located; and

(e) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(3) Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax.

History: Ap. p. Sec. 3860, Pol. C. 1895; amd. Sec. 1, p. 97, L. 1899; re-en. Sec. 2616, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1917; re-en. Sec. 2169, R. C. M. 1921; amd. Sec. 2, Ch. 96, L. 1923; amd. Sec. 2, Ch. 67, L. 1931; amd. Sec. 1, Ch. 134, L. 1977. Cal. Pol. C. Sec. 3746.

Amendments

The 1977 amendment deleted "a postcard or other" in the first sentence of subdivision 2 before "written notice, postage prepaid"; divided subdivision 2 into subdivisions 2 and 3; inserted subdivisions 2(a) through 2(e); inserted "of the tax due for the current year or of delinquent tax" in subdivision 3; and made minor changes in phraseology and punctuation.

84-4110. (2173) **Repealed.**

Repeal

Section 84-4110 (Sec. 98, p. 108, L. 1891), relating to enforcement of the payment of taxes of decedents, was repealed by Sec. 15, Ch. 263, Laws of 1975.

84-4116. (2181) **Statement to be transmitted to the state department of revenue by the county clerk.** Within ten days after each settlement the county clerk must transmit by mail a statement to the state department of revenue, in such form as it may require, of each kind of property assessed and delinquent, and the total amount of delinquent taxes.

History: En. Sec. 106, p. 109, L. 1891; re-en. Sec. 3872, Pol. C. 1895; re-en. Sec. 2628, Rev. C. 1907; re-en. Sec. 2181, R. C. M. 1921; amd. Sec. 7, Ch. 96, L. 1923; amd. Sec. 150, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3763.

Compiler's Notes

The compiler substituted "state department of revenue" for "state board of equalization" in the text of this section.

Amendments

The 1973 amendment substituted "state department of revenue" for "state board of equalization" in the caption.

84-4130. (2197) **Lien of state when vests in purchaser—how alone divested.** On filing the certificate with the county clerk, the lien of the state vests in the purchaser, and is only divested by the payment to him or to the county treasurer for his use of the purchase money and two-thirds (2/3) of one per cent additional for each month that elapses from the date of the sale until redeemed.

History: En. Sec. 121, p. 112, L. 1891; re-en. Sec. 3888, Pol. C. 1895; re-en. Sec. 2644, Rev. C. 1907; re-en. Sec. 2197, R. C. M. 1921; amd. Sec. 1, Ch. 8, L. 1967.

Amendments

The 1967 amendment inserted "two-thirds (2/3) of" preceding "one per cent additional."

Extent of Lien

This section does not permit mortgagee who had previously purchased certificates of tax sale to retain a lien upon the real estate for the amount of certificates after sheriff's sale. Stallings v. Erwin, 148 M 227, 419 P 2d 480, 483.

Where, subsequent to purchase of tax certificates, mortgagee foreclosed the mortgage, the foreclosure sale cut off any lien asserted by mortgagee for taxes paid although the mortgage permitted the mortgagee to pay taxes and collect the same upon foreclosure. Stallings v. Erwin, 148 M 227, 419 P 2d 480, 483.

Lienholder's Right to Redeem

One who was occupier of land and assignee of tax sale certificate held lien on such land in accord with this section, and thus could redeem subsequent tax sale certificate at any time before application for tax deed. State ex rel. Burkhartsmeyer Bros. v. McCormick, — M —, 510 P 2d 266.

84-4132. (2201) Time for redemption.

Application for Tax Deed

The three-year period for redemption began when the county purchased land by tax certificate, and the notice and application for tax deed by a subsequent purchaser from the county prior to the expiration of the three-year period did not end the right of redemption; rather, the right of redemption continued to the end of the three years, then expired because notice and application had been made. Madden v. Zimmerman, — M —, 532 P 2d 414.

Right to Redeem

Occupier of land who was assignee of tax sale certificate held lien on such land under section 84-4130, and thus had right to redeem subsequent certificate at any time before notice and application for tax deed. State ex rel. Burkhartsmeyer Bros. v. McCormick, — M —, 510 P 2d 266.

References

United States v. Johnston, 247 F Supp 707.

84-4133. (2202) Redemption to be made in lawful money, etc.

Check as "Lawful Money"

Use of a check by the small business administration in the redemption of tax delinquent property by the United States constituted "lawful money" under this section and certificate of redemption issued to the government four days before defendant filed application for tax deed was valid. United States v. Johnston, 247 F Supp 707.

84-4144 to 84-4150. Repealed.

Repeal

Sections 84-4144 to 84-4150 (Secs. 1 to 7, Ch. 43, L. 1945), relating to tax deeds, were repealed by Sec. 15, Ch. 126, Laws 1977.

84-4150. Title conveyed.

Creditors of Owner

This section cuts off the rights of creditors of a deceased landowner unless they can bring themselves within the exceptions stated in this section, and they must look to other assets of the estate for satisfaction of their claims. Madden v. Zimmerman, — M —, 532 P 2d 414.

84-4151. (2209) Notice of application for tax deed.

Delay in Redemption

Redeemer's delay of 58 days after receipt of notice under this section, or until two days before expiration of period, was not unreasonable and did not establish defense of laches in redeemer's mandamus suit. State ex rel. Burkhartsmeyer Bros. v. McCormick, — M —, 510 P 2d 266.

Search of Records

Tax-sale purchaser who complied with this section by registered mail addressed to the owner at her last known address and published notice in newspaper was not required, when the notice was returned marked "address unknown," to search the probate records to determine whether owner was deceased and the name and address of her administrator; rather, the burden was on the owner to keep the taxing authorities informed. Madden v. Zimmerman, — M —, 532 P 2d 414.

Sufficient Property Interest

Tax certificates assigned to plaintiff two weeks after the filing of quiet title action was not sufficient interest to support action against holder of tax deed. Alden v. Johnson, — M —, 535 P 2d 168.

84-4154. (2210) Redemption from tax sales.

References

United States v. Johnston, 247 F Supp 707.

84-4155. (2211) Piecemeal redemption of land sold for taxes. (1) Whenever any person shall desire to redeem from a tax sale and pay all subsequent taxes upon any lots, piece, or parcel of real estate which said person shall own or hold a mortgage or other lien against or when such

person shall be the owner of or have some interest in such property, it shall be the duty of the county treasurer of the county in which such real estate is situated to permit such redemption and payment; and in case the real estate shall have been assessed and sold, together with other real estate, or in case the tax assessed against any other property shall be a lien thereon, then it shall be the duty of said county treasurer to compute and apportion the tax that should have properly been assessed against the real estate sought to be redeemed and upon which the taxes are sought to be paid the same as if said property had been separately assessed.

(2) Any personal property tax which is a lien upon said real estate shall be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned.

History: En. Sec. 1, Ch. 91, L. 1915; amd. Sec. 1, Ch. 73, L. 1919; re-en. Sec. 2211, R. C. M. 1921; amd. Sec. 1, Ch. 48, L. 1923; amd. Sec. 1, Ch. 17, L. 1941; amd. Sec. 16, Ch. 52, L. 1977.

Amendments

The 1977 amendment deleted "firm, copartnership, corporation or association" after "person" throughout the section; and made minor changes in phraseology, punctuation and style.

84-4158. (2214) **Procedure in actions to quiet title to tax deed property.**

Notice

Since this section takes precedence over Rule 77(d) pursuant to Rule 81, RCivP, defendants were not entitled to notice of entry of quiet title decree in favor of petitioner where defendant, after hearing on order to show cause, failed to post the required bond. Rosen v. Midkiff, — M —, 519 P 2d 416.

Order Requiring Deposit

Where defendants in action to quiet title had notice through their attorney that if they did not deposit certain sum with court, decree would be entered against them, and they did not pay, court's order quieting title in plaintiffs was upheld. Rosen v. Midkiff, — M —, 519 P 2d 416.

Presumption of Posting of Notice

Mere fact that affidavit of posting of notice was not in court file did not overcome presumption that notice was posted since 93-1301-7(15) states that an official shall be presumed to have regularly performed his duty. Rosen v. Midkiff, — M —, 519 P 2d 416.

Rebuttable Presumption

In action to quiet title defendant's attorney's failure to find affidavit of posting in file was not enough to override rebuttable presumption in favor of posting by clerk in routine and regular manner. Rosen v. Midkiff, — M —, 519 P 2d 416.

84-4159. Repealed.

Repeal

Section 84-4159 (Sec. 1, Ch. 100, L. 1943), relating to limitation of actions to set aside tax deeds, was repealed by Sec. 15, Ch. 126, Laws 1977.

84-4166. (2215.5) **Defense to action—redemption of parcels.** Any defendant may appear in the action within the time provided by law for appearances in civil actions, may set up any defense to the action he may have and may therein question the legality, validity, or the sufficiency of any act had in connection with the assessment or sale of the land. Any defendant to the action may make redemption of the lands from the tax sale by paying the total amount of delinquent taxes and penalties which plaintiff has paid, with interest thereon at 8% a year from date of payment, together with costs of the action. Upon such payment, a certificate of redemption shall be issued by the county treasurer to the defendant so paying, and thereupon the action shall be dismissed. Whenever a defendant desires to redeem from a tax sale and pay all subsequent taxes upon any lots, piece,

or parcel of real estate, which a person [the defendant] owns or holds a mortgage or other lien against or has any interest in, the county treasurer of the county in which such real estate is situated shall permit such redemption and payment. In case the real estate has been assessed against any other property and is a lien thereon, then the county treasurer shall compute and apportion the tax that should have properly been assessed against the real estate sought to be redeemed and upon which the taxes are sought to be paid, the same as if the property had been separately assessed. Any personal property tax which is a lien upon such real estate shall be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned.

History: En. Sec. 5, Ch. 176, L. 1933; amd. Sec. 17, Ch. 52, L. 1977; amd. Sec. 8, Ch. 126, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 52 and once by Ch. 126. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 52, Laws of 1977, deleted "firm, copartnership, corporation or association" after "person" in the fourth sentence; and made minor changes in phraseology, punctuation and style.

Chapter 126, Laws of 1977, made minor changes in phraseology, punctuation and style.

84-4169. (2215.8) **Form of tax deed issued on filing copy of decree with treasurer.** When a certified copy of the decree has been filed with the county treasurer, he must issue a tax deed for the real estate described in the judgment, which deed in substance shall be as follows: [Form * * * Same as parent volume.]

History: En. Sec. 8, Ch. 176, L. 1933; amd. Sec. 9, Ch. 126, L. 1977.

Amendments

The 1977 amendment substituted "When a certified copy of the decree has been filed with the county treasurer" for "Upon filing with the county treasurer a certified copy of the decree" at the beginning of the section.

84-4175.1. Certain unpaid taxes uncollectible—stricken from records. All unpaid taxes, which constitute a lien on real property in the state of Montana, levied and assessed against real property which have remained delinquent, more than ten (10) years prior to the effective date of this act, whether the levy be by general or special assessment, or by the state of Montana, or any county, city, or political subdivision of the state of Montana, are hereby declared to be uncollectible and stricken from the respective tax records.

History: En. 84-4175.1 by Sec. 1, Ch. 286, L. 1975.

Title of Act

An act to provide a ten year statute of limitations on all unpaid taxes levied and assessed prior to said ten year period, against real property, and to provide for the destruction of all such tax records over thirty years old; and providing an effective date.

84-4175.2. Treasurers to destroy certain tax records. The treasurer of each county, city, or town in the state of Montana, may destroy all tax records in his possession more than thirty (30) years old.

History: En. 84-4175.2 by Sec. 2, Ch. 286, L. 1975.

Effective Date

Section 3 of Ch. 286, Laws 1975 read "This act shall be effective July 1, 1976."

84-4190.1. Purpose. The purpose of this act is to authorize a board of county commissioners to establish criteria for the classification of unsold tax deed lands and other county owned lands, however acquired, and to classify such lands for retention or disposal in accordance with such criteria so that county owned lands shall be used in the best interests of the county and for the public benefit and welfare, to encourage the application of a "multiple use" principle in the utilization and administration of such lands so that the administration of lands classified for retention can be co-ordinated with land-use planning, zoning, grazing and agricultural land improvement, fish and wildlife habitat improvement and enhancement, recreation, access to other intermingled or adjacent multiple use areas, and for any other appropriate uses which are in the best interests of the county or which will advance the public benefit and welfare, and to grant sufficient powers to the board of county commissioners to enable the board to achieve the foregoing purpose.

History: En. 84-4190.1 by Sec. 1, Ch. 540, L. 1975.

Title of Act

An act authorizing a board of county commissioners to classify and manage county owned lands and to retain, lease, or dispose of interests in such lands; repealing sections 84-4193, 84-4194, and 84-4198, R. C. M. 1947.

84-4190.2. Definitions. As used in this act:

(1) "Multiple use" means the management of the various surface and subsurface resources so that they are utilized in the combination that will best meet the present and future needs of the county; the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; and harmonious and co-ordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output; and the use of said lands, where possible, to afford access in multiple use areas to federal and state lands.

(2) "Board" means the board of county commissioners.

History: En. 84-4190.2 by Sec. 2, Ch. 540, L. 1975.

84-4191. Terms of sale—sale contract—deed of conveyance. Such sale shall be made for cash or, in the case of real property, on such terms as the board of county commissioners may approve; provided, however, that if such sale is made on terms at least twenty per cent (20%) of the purchase price shall be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed five (5) years and all such deferred payments shall bear interest at the rate of eight per cent (8%) per annum.

If a sale is made on terms, the chairman of the board of county commissioners shall execute a contract containing such terms as shall be provided by a uniform contract prescribed by the board of equalization and upon

payment of the purchase price in full together with all interest which may become due on any installment or deferred payments, the chairman of the board of county commissioners shall execute a deed attested to by the county clerk to the purchaser, or his assigns, or such other instruments as shall be sufficient to convey all of the title of the county in and to the property so sold, provided that the county may in the discretion of the board of county commissioners reserve not to exceed six and one-fourth per cent (6-¼%) royalty interest in the oil, gas, other hydrocarbons and minerals produced and saved from said land.

History: En. Sec. 2, Ch. 171, L. 1941; amd. Sec. 1, Ch. 187, L. 1949; amd. Sec. 1, Ch. 163, L. 1969.

Amendments

The 1969 amendment increased the deferred payment interest rate from "four per cent (4%)" per annum to "eight per cent (8%)."

Effective Date

Section 2 of Ch. 163, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

Mineral Rights Reservation

County has implied power under proviso of this section to make mineral reservation in deeds to tax-title lands sold by it. Smith v. County of Musselshell, 155 M 376, 472 P 2d 878.

In action to determine rights under deed, evidence that all parties to county's deed regarded reservation in deed as royalty interest and not mineral interest and language in deeds that "all minerals contained in and hereafter mined, produced, extracted, or otherwise taken" supported finding that such reservation was royalty interest. Superior Oil Co. v. Vanderhoof, 307 F Supp 84.

84-4192. Land subject to taxation to purchaser—when. On the first day of January following the execution of such contracts or deed the land shall be subject to taxation in the name of the purchaser or his assignee and in the event the taxes are not paid and the same become delinquent said contract shall be subject to cancellation and all payments theretofore made shall be taken, treated, and regarded as rent for said property.

History: En. Sec. 3, Ch. 171, L. 1941; amd. Sec. 14, Ch. 388, L. 1975.

Amendments

The 1975 amendment substituted "On the first day of January" for "On the first Monday of March."

84-4192.1. Powers and duties of board regarding county lands. (1) Any lands previously or hereafter offered for sale by the county commissioners of any county under section 84-4190, and not sold at such sale, or any lands concerning which the preferential right to purchase has been terminated and barred under the provisions of section 84-4190, and any other lands owned by the county, however acquired may, in the discretion and at the election of the board, be administered by the board under this section. The board may, in its discretion, elect to exercise all or any of the powers and authority granted to it by this act, and to the extent it so elects, the provisions of this act shall be controlling and shall supersede all conflicting provisions of other acts. The board may:

(a) establish criteria for the classification of such lands;

(b) classify such lands, surface and subsurface, for retention or disposal, and for such purposes and uses as the board may determine are in the best interests of the county, and for the public benefit and welfare, and in so doing, the board shall consider the multiple use potential of said lands,

and the potential of said lands as access to other intermingled or adjacent multiple use lands or areas;

(c) grant permits or licenses to use the lands in such manner as the board may determine and in the best interests of the county, and for the public benefit and welfare, fix the terms, conditions, and price of such permits or licenses;

(d) enter into co-operative use agreements with individuals, groups of individuals, corporations, associations, co-operative state grazing districts, the state of Montana, the United States of America, and any state or federal subdivision, department, bureau, commission, or agency, including, but not limited to, the Montana department of fish and game, the bureau of land management, conservation districts, and the Montana department of state lands;

(e) trade or exchange such lands with individuals or other governmental agencies, state or federal, such trades or exchanges to be made pursuant to terms, conditions, and procedures adopted by the board;

(f) grant leases of the lands for such purposes and uses as the board may determine are in the best interests of the county, including the exploration and development of oil, gas, and other minerals, and to fix the terms and conditions of such leases and the consideration to be paid by any lessee, and when for oil, gas, or other mineral exploration or development to reserve to the county a royalty interest as fixed by agreement between the board and the lessee, provided that lease of lands, under this act, shall not be made for a consideration less than an amount equal to the taxes these lands would have levied upon them if they were private lands, and the proceeds of any such lease shall be apportioned on the current year's levy as provided under section 84-4195, R. C. M. 1947;

(g) sell such lands or any part thereof pursuant to the procedures hereinafter provided;

(h) in trading, exchanging, or selling such lands, to make such reservations in favor of the county as the board considers proper, including, but not limited to, reserving to the county of any or all oil, gas, or other mineral or royalty interests, sand, gravel, clay, or other material, right of ways or easements for roads, utility lines, and other purposes or uses; and

(i) promulgate rules and regulations for the administration of such lands.

(2) Leases, permits, and licenses shall not extend for a period longer than ten (10) years, except that oil, gas, and other mineral leases may be for a term of ten (10) years and as long thereafter as oil, gas, or other minerals are produced in commercial quantities. However, the board may provide for the renewal of such leases, permits, and licenses.

(3) The board may authorize a lessee to place upon the lands improvements directly related to conservation of the land or necessary for proper utilization of the land for the purposes for which it is leased. Whenever another person becomes the lessee of such land, such other persons shall pay to the former lessee the reasonable value of such improvements at the time the new lessee takes possession of such lands. In case the former lessee and the new lessee are unable to agree on the reasonable value of such improvements, then such value shall be ascertained by three (3) arbitrators, one (1)

of which shall be appointed by the former lessee, one (1) by the new lessee and the third by the two (2) arbitrators so appointed. The reasonable compensation that such arbitrators may charge for their services shall be paid in equal shares by the former lessee and the new lessee. The value of the improvements so ascertained and fixed by the arbitrators shall be binding on both parties; provided, however, that if either party is dissatisfied with the valuation so fixed, the dissatisfied party may, within ten (10) days of being notified of the arbitrators' decision, appeal from that decision to the board, and the decision of the board shall be final. Any costs incurred by the board in re-examining the decision of the arbitrators shall be borne by the former lessee and the new lessee in such proportions as the board may determine. The former lessee may, at the former lessee's option, remove or dispose of the movable improvements, but the same must be removed within sixty (60) days from the date of the expiration of the lease and, if not so removed, then all such improvements shall become the property of the county unless the board for good cause grants additional time for the removal thereof. Before a lease is issued to the new lessee, the new lessee shall show that the former lessee has been paid the value of the improvements as agreed upon by them or as fixed and determined as herein provided, or that the former lessee has elected to remove the improvements.

(4) The provisions of subsection (3) shall apply to the holders of permits or licenses for the use of county lands.

(5) The board shall make an order for public auction of any lands classified for sale, such sale to be held at the front door of the county courthouse. Notice of the sale shall be given by publishing a notice in a newspaper published in the county once a week for three (3) consecutive weeks preceding the date fixed for the sale. The first publication of the notice shall be made not more than thirty (30) days prior to the sale date. If there is no newspaper published in the county, the notice shall be given by posting copies at three (3) of the most public places in the county at least twenty (20) days, but not more than thirty (30) days, preceding the sale date. The notices shall describe the land to be sold and the appraised value thereof and no sale may be made for less than the appraised value thereof as fixed by the board. The sale shall be for cash, or on such terms as the board may approve, provided at least twenty per cent (20%) of the purchase price shall be paid in cash. The lessee, permittee, or licensee of any of the lands, then subject to a lease, permit, or license, shall have a preference to purchase the lands at an amount equal to that bid by the highest bidder at the sale.

(6) Any of the lands classified for exchange by the board may be exchanged for any other lands pursuant to such procedures as the board may adopt, and all such exchanges must be for equivalent value. If the lands sought to be exchanged are not of equivalent value, any difference may be equalized by a cash payment. Any procedures adopted by the board for the exchange of land must include public notice as provided under subsection (5) of this section and opportunity for public hearing on the proposed exchange.

(7) The board may appoint not less than three (3) nor more than five (5) residents of the county to act as an advisory committee to the board

in implementing the provisions of this act. The duties of the advisory committee are to be established by the board. The board may provide for the payment of expenses incurred by the advisory committee in the carrying out of their duties.

(8) When considered in the best interests of the county, the board may enter into agreements for the pooling of acreage with others for unit operations for the production of oil or gas, or both, and for the apportionment of oil or gas royalties, or both, on acreage or other equitable basis, and may modify existing leases and leases hereafter entered into with respect to delay rentals, delay drilling penalties and royalties in accordance with such pooling agreements, and such unit plans of operation; provided, however, that such agreements shall not change the percentages of royalties to be paid to the county from the percentages as fixed in its leases.

(9) All proceeds from any use or disposition of lands pursuant to the terms of this act shall be apportioned and distributed according to the provisions of section 84-4195.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975.

84-4192.2. Limitation to lands not necessary for county business—appraisal required. The sale, exchange, lease or issuance of licenses and permits of county lands as provided in this act shall extend only to those lands not necessary to the conduct of the county's business.

The county commissioners shall, before they sell, exchange or lease lands under the provisions of this act, cause such lands to be appraised by a qualified, independent person or persons who may be but is not required to be an agent of the state department of revenue, to determine the value of such lands for the purpose of such sale, exchange or lease. For the purposes of this subsection a renewal of the lease shall be considered an initial lease, if the renewal is for a term exceeding five (5) years.

History: En. 84-4192.2 by Sec. 4, Ch. 540, L. 1975.

84-4193, 84-4194. Repealed.

Repeal

Sections 84-4193, 84-4194 (Secs. 4, 5, Ch. 171, L. 1941; Sec. 1, Ch. 82, L. 1943; Sec. 1, Ch. 48, L. 1945), relating to disposal or lease of land unsold at public sale, were repealed by Sec. 7, Ch. 540, Laws of 1975.

84-4196. Confirmation of oil and gas leases heretofore made.

Reservation of Royalty Interest

In action to determine rights under deed, evidence that all parties to county's deed regarded reservation in deed as royalty interest and not mineral interest and language in deeds that "all minerals contained in and hereafter mined, produced, extracted, or otherwise taken" supported finding that such reservation was royalty interest. Superior Oil Co. v. Vanderhoof, 307 F Supp 84.

84-4198. Repealed.

Repeal

Section 84-4198 (Sec. 1, Ch. 147, L. 1943; Sec. 1, Ch. 75, L. 1963), relating to right of lessee of tax deed lands to purchase at appraised value, was repealed by Sec. 7, Ch. 540, Laws of 1975.

84-41-100. Validation of tax deeds notwithstanding failure to classify lands. No tax deed issued in this state may be held invalid, nor may its legality be in any manner affected by reason of the prior failure of the board of county commissioners of any county to provide for the classification of the lands in such county as required by 84-429.7 through 84-429.11 or prior law. This enactment shall be retroactive and shall apply to all tax deeds issued under any law of the state of Montana providing a method of applying for and securing a deed to lands sold for delinquent taxes. All tax deeds issued before July 1, 1941, under the laws of Montana are hereby legalized and declared to be valid, notwithstanding that the lands thereby conveyed may not have been classified under the statutes herein referred to.

History: En. Sec. 1, Ch. 61, L. 1941; amd. Sec. 10, Ch. 126, L. 1977.

Amendments

The 1977 amendment substituted "84-429.7 through 84-429.11 or prior law" for "sections 84-430 to 84-437" at the end of the first sentence; substituted "issued before July 1, 1941" for "heretofore issued" in the third sentence; and made minor changes in phraseology.

84-41-105. Tax prepayment—new industrial facilities. (1) A person intending to construct or locate a major new industrial facility, as defined in subsection (2) of this section, shall upon request of the board of county commissioners of the county in which the facility is to be located, prepay, when permission is granted to construct or locate by the appropriate governmental agency, an amount equal to three (3) times the estimated property tax due the year the facility is completed. The person who is to prepay under this section shall not be obligated to prepay the entire amount at one time but, upon request of the board of county commissioners of the county, shall prepay only that amount shown to be needed from time to time. To assure this payment or payments, the person who is to prepay shall guarantee to the board of county commissioners and also have a bank or banks guarantee that these amounts will be paid as needed for expenditures created by the impact. When the facility is completed and assessed by the department of revenue, it shall be subject to taxation as all other property similarly situated, during the first three (3) years and thereafter, except that one-fifth (1/5) of the amount prepaid shall be allowed as a credit against property taxes in each of the first five (5) years after the start of productive operation of the facility.

(2) A major new industrial facility is a manufacturing or mining facility which will employ on an average annual basis at least one hundred (100) people in construction or operation of the facility, and which will create a substantial adverse impact on existing state, county, or municipal services.

History: En. 84-41-105 by Sec. 1, Ch. 449, L. 1975.

Title of Act

An act providing for prepayment of taxes on certain major new industrial facilities; and providing an effective date.

Effective Date

Section 2 of Ch. 449, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 16, 1975.

CHAPTER 42—COLLECTION OF PERSONAL PROPERTY TAXES NOT A LIEN ON REAL ESTATE—ROAD AND POOR TAXES

Section
84-4201. Duty of department of revenue or its agent.
84-4202. Duty of treasurer.
84-4209. Rate of taxation where property is taxable.
84-4211. Department of revenue or its agent to note report of property.
84-4216. Cancellation of such taxes and obligations—filing of lists.
84-4218. Prorated taxes.

84-4201. (2238) **Duty of department of revenue or its agent.** It shall be the duty of the department of revenue or its agent, upon discovery of any personal property in the county, the taxes upon which are not a lien upon real property sufficient to secure the payment of such taxes, to immediately, and in any event not more than five days thereafter, make a report to the treasurer, setting forth the nature, kind, description and character of such property in such a definite manner that the treasurer can identify the same, the amount and assessed valuation of such property, where the same is located, the amount of taxes due thereon, and the name and address of the owner, claimant, or other person in possession of the same. Where such personal property is located in any city or town, which shall have provided by ordinance for the collection of its taxes for general, municipal and administrative purposes by its city or town treasurer, also and at the same time furnish to said city or town treasurer a duplicate of such notice to the county treasurer. For the purpose of determining the taxes due on such personal property, the department or its agent must use the levy made during the previous year.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2683, Rev. C. 1907; re-en. Sec. 2238, R. C. M. 1921; amd. Sec. 1, Ch. 102, L. 1923; amd. Sec. 1, Ch. 24, L. 1925; amd. Sec. 1, Ch. 143, L. 1929; amd. Sec. 1, Ch. 6, L. 1939; amd. Sec. 1, Ch. 136, L. 1943; amd. Sec. 1, Ch. 23, L. 1951; amd. Sec. 82, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3820.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "assessor" near the beginning of the first sentence and in the third sentence; and deleted "in his opinion" before "a lien upon real property" near the beginning of the first sentence.

Flathead Reservation Indians

This section is invalid in so far as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, — US —, 48 L Ed 2d 96, 96 S Ct 1634, affirming 392 F Supp 1325.

84-4202. (2239) **Duty of treasurer.** (1) The county treasurer shall collect taxes on all personal property and, in the case provided in the preceding section, shall immediately, upon receipt of the report prescribed by 84-4201, notify the person or persons against whom the tax is assessed and any person who has a properly perfected security interest of record with the registrar of motor vehicles of the state of Montana that the amount of such tax is due and payable at the county treasurer's office. The county treasurer shall, at the time of receiving the report and in any event within 30 days from the receipt of such report, levy upon and take into his possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer and proceed to sell the same in the same manner as property is sold on execution by the sheriff. The county treasurer may, for the purpose of making the levy and

sale, direct the sheriff to make the levy and sale, and the sheriff, undersheriff, or any deputy sheriff of the county is ex officio a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. The sheriff may receive the same fees as he is entitled to in making a seizure and sale under execution.

(2) The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of the treasurer to levy upon and sell such personal property for the taxes levied thereon.

(3) The tax on such personal property may be collected and the payment thereof enforced by the seizure and sale of any personal property in the possession of the person assessed at any time after the date the assessment is made or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to any one of the methods provided for does not bar the right to resort to either or both of the other methods. Any of the methods provided for may be used until the full amount of the tax is collected.

(4) The county has a general lien, dependent on possession, upon any moneys in its possession belonging to any taxpayer for any amounts due the county for any delinqent personal property taxes not a lien on real estate of the taxpayer. Due notice shall be given the lien holder, if any.

(5) (a) The owner of a mobile home or house trailer which is not taxed as an improvement, as improvements are defined in 84-101, shall pay the personal property tax in two payments, except as provided in subsection (5)(b). The first payment is due within 30 days from the date of the notice of taxes due. The second payment is due no later than September 30 of the year in which the property is assessed. The department of revenue shall issue tax-paid stickers to the county treasurers. The treasurers shall issue the stickers to the owners of mobile homes and house trailers if the taxes are paid in full. An owner shall then display the sticker, which shall be visible from the exterior of the mobile home or house trailer. No mobile home movement permit provided in 84-6606 may be issued unless the taxes have been paid in full to the county treasurer.

(b) The treasurer shall issue the mobile home movement declaration provided for in section 84-6606 to a person required by that section to execute it in such quantities as he requests to a maximum of 100. The treasurer shall issue such additional quantities of the declaration to a maximum of 100 as the person requests at the discretion of the county treasurer upon receipt from the person of the previously issued declarations properly executed. In any event executed declarations must be delivered to the treasurer within 30 days from their issue.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R. C. M. 1921; amd. Sec. 2, Ch. 102, L. 1923; amd. Sec. 1, ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162, L. 1975; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977. Cal. Pol. C. Sec. 3821.

Amendments

The 1973 amendment substituted "report prescribed by section 84-4201, R. C. M. 1947," for "report from the assessor" near the end of the first sentence in the first paragraph; and deleted "assessor's" following "at the time of receiving the" near the beginning of the second sentence in the first paragraph.

Chapter 162, Laws of 1975 inserted "and

any person who has a properly perfected security interest of record with the registrar of motor vehicles of the state of Montana" in the first sentence of the first paragraph.

Chapter 475, Laws of 1975 added the last paragraph.

The 1977 amendment inserted the subsection designations; substituted "two payments, except as provided in subsection (5)(b)" at the end of the first sentence of subdivision (5)(a) for "semiannual installments on or before January 1 and July 1 of each year"; inserted the second and third sentences of subdivision (5)(a); deleted "for each six-month period" from the end of the fourth sentence of subdivision (5)(a); substituted "the taxes" in the last sentence of subdivision (5)(a) for "both semiannual installments"; added subdivision (5)(b); and made minor changes in phraseology, punctuation and style.

Flathead Reservation Indians

This section is invalid in so far as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, — US —, 48 L Ed 2d 96, 96 S Ct 1634, affirming 392 F Supp 1325.

84-4209. (2247) **Rate of taxation where property is taxable.** All rates of tax levy set by the board of county commissioners on the second Monday in August of each year, shall apply permanently to this class of personal property during the ensuing year, and the treasurer shall, upon collection of any such taxes, immediately distribute the money so collected to the various and proper funds in his charge. Personal property which was in the state and subject to taxation on the first day of January of any year shall be taxable wherever and whenever found in any county in the state, whether the same be owned, claimed, or possessed by the person owning, claiming or possessing it on the first day of January or not; provided, that in case the same property is assessed in more than one county, the county first making the assessment shall be entitled to collect the taxes; provided further, that if the rate of taxation fixed for the year in which the collection is made is an increase over the preceding year's levy, then the said board of county commissioners may direct the county treasurer to collect the amount of such increased levy, but shall not be obliged to do so in cases where, in the opinion of the board, the cost of collection would exceed the amount of such increase, and provided further that if the rate fixed for the year in which the collection is made shall be less than the levy for the preceding year, then the person from whom such excess tax was collected may file with the board of county commissioners a duly verified claim for a refund of such excess tax, at any time before the first day of November of the year in which such an excess was collected, and such claim shall be allowed and ordered paid by the board of county commissioners to the amount of such excess.

History: Ap. p. Sec. 158, p. 121, L. 1891; re-en. Sec. 3943, Pol. C. 1895; amd. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2686, Rev. C. 1907; re-en. Sec. 2247, R. C. M. 1921; amd. Sec. 1, Ch. 122, L. 1933; amd. Sec. 15, Ch. 388, L. 1975. Cal. Pol. C. Sec. 3823.

Amendments

The 1975 amendment substituted "first day of January" for "first Monday in March" in two places.

84-4211. (2251) **Department of revenue or its agent to note report of property.** The department of revenue or its agent must note on the assessment book opposite the names of each person owning, claiming, or possessing such personal property which may be so reported by him to the

treasurer, the fact that such report was made to the treasurer, and the date when the same was so made.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907; re-en. Sec. 2251, R. C. M. 1921; amd. Sec. 84, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "assessor" at the beginning of the section.

84-4216. Cancellation of such taxes and obligations—filing of lists. Upon receipt of such list or lists and within 30 days thereafter, the board of county commissioners shall examine the same and make any necessary corrections. Thereupon the board of county commissioners shall make its order canceling all such personal property taxes and contractual obligations contained in such list or lists, as corrected, required by this act to be canceled, and spread such order upon its minutes. Such order and minutes need not set forth in full the contents of such list or lists, a proper reference therein for their identification being sufficient. At the time of making such order, the original or copy of such list or lists, as corrected, shall be filed with and as a part of the records of the board. One legible copy thereof shall be filed with the county clerk and recorder as a public record, and one legible copy thereof shall be filed with the county treasurer as a permanent record of his office.

History: En. Sec. 2, Ch. 44, L. 1949; amd. Sec. 11, Ch. 126, L. 1977.

Amendments

The 1977 amendment deleted "ribbon" before "copy" in the fourth sentence; deleted "carbon" before "copy" twice in the fifth sentence; and made minor changes in phraseology, punctuation and style

84-4218. Prorated taxes. A person who acquires an aircraft required to be registered under section 1-325 after March 1 in any year shall register the aircraft within thirty (30) days of acquiring it. The county assessor shall prorate the personal property tax due on the aircraft for the remaining portion of the year in the manner provided in 84-6011.

History: En. 84-4218 by Sec. 3, Ch. 542, L. 1975; amd. Sec. 3, Ch. 210, L. 1977.

Amendments

The 1977 amendment substituted March 1 for February 1 as the annual registration deadline; substituted "county assessor" for "county treasurer" at the beginning of the second sentence; and substituted "in 84-6011" for "for proration of motor vehicle taxes" at the end of the section.

CHAPTER 44—SETTLEMENT WITH STATE AUDITOR AND TREASURER

84-4403 to 84-4405. (2265 to 2267) Repealed.

Repeal

These sections (Secs. 4000 to 4002, Pol. C. 1895), relating to examination of tax collectors' books, were repealed by Sec. 23, Ch. 249, Laws 1967.

CHAPTER 45—PROTEST PAYMENT OF TAXES—ACTION TO RECOVER

Section

84-4502. Payment of taxes under protest—action to recover.
84-4503. Assessment for taxation—increase over statement of owner.

84-4502. (2269) **Payment of taxes under protest—action to recover.** (1) In all cases of levy of taxes, licenses or other demands for public revenue which are deemed unlawful by the party whose property is thus taxed, or from whom such tax or license is demanded or enforced, such party may before such tax or license becomes delinquent pay under written protest such portions of such tax or license deemed unlawful, to the officers designated and authorized to collect the same, specifying the grounds of protest; and thereupon the party so paying, or his legal representatives, may bring an action in any court of competent jurisdiction against the officers to whom said license or tax was paid, or against the county or municipality in whose behalf the same was collected, and the state department of revenue, which shall be served with summons and copy of the complaint, to recover such portions of such tax or license paid under protest; provided, that any action instituted to recover any such portions of license or tax paid under protest shall be commenced and summons served within sixty (60) days after the date of payment of the same; provided further, that when any such license or tax is payable in installments the first installment portion of such tax or license as may be deemed unlawful, may be paid under written protest and suit commenced and summons served to recover the same within the time herein prescribed, and if any subsequent installment of such license or tax shall become due or payable before the final determination of the suit commenced to recover the first installment portion paid under protest, then such subsequent installment portion deemed unlawful, may also be paid under written protest, and no suit or action need be commenced to recover the same, but the determination of the suit or action commenced to recover the first installment portion paid under protest, shall determine the right of the party paying such subsequent installment to have the same, or any part thereof refunded to him. All such portions of licenses and taxes, when so paid under protest, shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as protest fund, and shall be invested in interest-bearing deposits in local banks or savings and loan associations and retained in such protest fund until the final determination of any suit or action to recover the same. Nothing contained herein prohibits the investment of the moneys of this fund in the state unified investment program.

(2) If no action is commenced within the time herein specified, or if such action be commenced and finally determined in favor of the county or municipality, or treasurer thereof, the amount of such protested portions of the license or tax shall be taken from such protest fund and deposited to the credit of the fund or funds to which the same property belongs, but if such action is finally determined adversely to such county or municipality, or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action, refund the amount of such protested portions of the license or tax, with costs of suit, and interest at the rate currently paid on short-term interest-bearing time deposits in banks in the county, or 5% a year, whichever is greater, from the date of payment under protest, to the person in whose favor such judgment is rendered; provided, that if such action was commenced for the purpose of recovering the first installment portions of any such license or tax, and

any subsequent installment thereof, has been paid under protest, as herein provided, then the county treasurer shall, at the time of refunding the amount of such first installment required by such judgment also refund such portion of any subsequent installment as the person holding such judgment is entitled to recover, together with interest thereon at the rate of 6% a year from the date of payment under protest.

History: Ap. p. 4024, Pol. C. 1895; amd. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2742, Rev. C. 1907; amd. Sec. 1, Ch. 135, L. 1909; re-en. Sec. 2269, R. C. M. 1921; amd. Sec. 1, Ch. 142, L. 1925; amd. Sec. 1, Ch. 204, L. 1955; amd. Sec. 151, Ch. 516, L. 1973; amd. Sec. 1, Ch. 348, L. 1977; amd. Sec. 1, Ch. 394, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 348 and once by Ch. 394. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the middle of the first sentence of subsection (1).

Chapter 348, Laws of 1977, substituted references to portions of tax or license for references to tax or license or any part or portion thereof throughout the section; and made minor changes in phraseology and punctuation.

Chapter 394, Laws of 1977, substituted "shall be invested in interest-bearing deposits in local banks or savings and loan associations" in the second sentence of subsection (1) for "no part thereof shall be paid over to any officer, or placed in any other fund or used for any purpose whatever, but the whole thereof shall be"; added the last sentence to subsection (1); substituted "and interest at the rate currently paid on short-term interest-bearing time deposits in banks in the county, or 5% a year, whichever is greater, from the date of payment under protest" in subsection (2) for "without interest"; and substituted "together with interest thereon at the rate of 6% a year from the date of payment under protest" at the end of subsection (2) for "without interest."

Application

Section 2 of Ch. 394, Laws 1977 read "This act applies to any suit filed after July 1, 1977."

84-4503. (2270) **Assessment for taxation—increase over statement of owner.** Whenever any person has delivered to the department of revenue or its agent a sworn statement of his property subject to taxation as now provided by law, and giving the estimated value of such property, and the department or its agent shall increase such estimated value, or add other property to such assessment list, the agent shall, at least ten days prior to the meeting of the county tax appeal board, give to such person written notice of such change which notice shall be substantially in the following form:

(Date) .....

Mr. .....

A change has been made in your assessment list as follows:
(Set out and describe specifically changes made in list.)

....., Agent

Department of Revenue

Such person may then appear before the county tax appeal board and contest the same; and if the assessment of any such person has been added to or changed, either by the department of revenue or by the county tax appeal board, and such person has not been notified thereof and given an opportunity to contest the same before the county tax appeal board, the tax on such increased value or added property shall, upon such facts being established, be adjudged by the court to be void, and such facts

and all questions relating thereto, when said tax has been paid under protest, may be heard and determined in the action provided for in section 84-4502. When any person has appeared before the county tax appeal board and has contested the increase in the estimated value of his property, or the addition of other property to his assessment list, and has appealed to the state tax appeal board from any action or decision with reference thereto by the county tax appeal board and such person is aggrieved at the final action of the state tax appeal board in making or allowing such increase or addition, he may pay the tax on such increase or addition or the installments thereof if payable in installments, under protest in the manner provided by section 84-4502, and thereupon, and within the time prescribed and in the manner provided by said section 84-4502, may commence an action to recover such tax, or installments, and in such action contest and litigate the payment of such taxes on such increased value or added property, on the same grounds and for the same reasons that he has contested the same before the county and state tax appeal boards, and for no other reasons and on no other grounds; provided, that all of the provisions of section 84-4502 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section.

History: En. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2743, Rev. C. 1907; amd. Sec. 2, Ch. 135, L. 1909; re-en. Sec. 2270, R. C. M. 1921; amd. Sec. 1, Ch. 142, L. 1925; amd. Sec. 85, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor; and substituted references to the county and state tax appeal boards for references to the county and state boards of equalization.

84-4505. (2268) **Injunction does not lie to restrain enforcement of tax.**

Implementation of Disproportionate Appraisal

Implementation of appraisal made by professional appraisers employing different methods than those formulated by the state is unlawful and a violation of the equal protection of the law, and may be restrained since the unauthorized appraisal would have been used as the basis for computation of taxes. Larson v. State, — M —, 534 P 2d 854.

CHAPTER 46—BANKS—TAXATION

Section
84-4604. Statements to be furnished by officers.
84-4605. Taxation of banks and shares of stock in.
84-4606. Banks with offices in more than one county—assessment and apportionment of tax.

84-4604. (2066) **Statements to be furnished by officers.** The cashier of every national bank shall make and deliver to the department of revenue or its agent in the county in which said bank is located, within five days after demand therefor, a statement, verified by his oath, showing the name of each shareholder, with his residence and the number of shares belonging to him at the close of business on December 31 each year, as the same then appeared on the books of said bank, and showing the face value of the capital stock, and the amount of surplus and undivided profits of said bank, and an estimate of the value for which such stock shall be

assessed. If said cashier fails to make such statement as required, the department of revenue or its agent shall forthwith obtain said information from the officers of the bank and for this purpose shall have access to the books of the bank, and the department or its agent shall therefor make an assessment of such stock, which shall be as fair and equitable as can be made from the best information available, or the figures disclosed by any prior report of the officers or directors of the bank, made to any state or federal officer to whom such bank is by law required to make reports, may be adopted.

History: En. Sec. 3, Ch. 81, L. 1921; re-en. Sec. 2066, R. C. M. 1921; amd. Sec. 86, Ch. 405, L. 1973; amd. Sec. 16, Ch. 388, L. 1975.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor; and made minor changes in phraseology.

The 1975 amendment substituted "at the close of business on December 31 each year" for "at the close of business the day next preceding the first Monday in March in each year" in the middle of the section.

84-4605. (2067) **Taxation of banks and shares of stock in.** (1) Every state bank or banking corporation located and doing business in this state and every private banker doing business in this state shall be taxed upon the value of all real estate and personal property owned by the bank, banking corporation, or private banker, upon the moneyed capital employed in the business, and such moneyed capital to be ascertained as provided by 84-301.6. The cashier or secretary of every bank or banking corporation and every private banker shall furnish to the department of revenue or its agent in the county in which its or his bank is located, within 5 days after demand therefor, a statement verified by his oath, showing all the resources and liabilities of the bank as disclosed by its books at the close of business on December 31 of the preceding year. If the cashier, secretary, or private banker fails to make the statement, the department or its agent shall forthwith obtain the information from any other available source and for this purpose shall have access to the books of the bank, banking corporation, or private banker. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by the bank, banking corporation, or private banker and of the moneyed capital employed in the business of the bank, banking corporation, or private banker. The assessment shall be as fair and equitable as can be made from the best information available. For the purpose of the assessment, the figures disclosed by any prior report made by the bank, banking corporation, or private banker to any state or federal officer pursuant to any state or federal law may be adopted. Any person required by this section to make the statement hereinabove provided who fails to furnish it shall be guilty of a misdemeanor and punished accordingly.

(2) All shares of stock in any bank or banking corporation shall be assessed at their full cash value, except to the extent that that value is represented in property which is assessable and taxable to the bank or banking corporation in this state, and shall be taxable to the owners of the shares in the county, school district, city, town, or place where the bank or banking corporation is located, whether the owners of the shares are residents of such county, school district, city, town, or place.

(3) The cashier or secretary of any bank or banking corporation shall furnish to the department or its agent, upon demand, the name of each stockholder with his residence and the number of shares belonging to him at the close of business on December 31 of the preceding year. If the cashier or secretary, for more than 5 days after the demand, fails to furnish such information, he is guilty of a misdemeanor and the department or its agent may obtain information from any other available source or from the books of the bank or banking corporation. For convenience, the assessment of the shares shall be entered on the personal property assessment list under the name of the bank or banking corporation concerned, but in the assessment list the names of the owners of such shares shall be set forth and the number of shares owned by each. The assessment, when so entered, has all the force and effect as if made in the names of the owners of the shares individually. The bank or banking corporation in which the shares are owned is liable for the payment of taxes assessed against the shares, and the taxes are payable by and collected from the bank or banking corporation in the same manner and under the same penalties as other taxes. The bank or banking corporation may recover from the owners of shares any taxes paid on the shares and has a lien therefor upon the shares and upon any dividends accrued or to accrue thereon.

History: En. Sec. 4, Ch. 81, L. 1921; re-en. Sec. 2067, R. C. M. 1921; amd. Sec. 1, Ch. 64, L. 1927; amd. Sec. 87, Ch. 405, L. 1973; amd. Sec. 17, Ch. 388, L. 1975; amd. Sec. 55, Ch. 566, L. 1977.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor; and made minor changes in style and phraseology.

The 1975 amendment substituted "at the close of business on December 31 of the preceding year" for "at twelve o'clock noon on the first Monday of March in each year" in the first sentences of subsections (1) and (3).

The 1977 amendment divided the former first sentence of subsection (1) into three sentences; substituted "84-301.6" at the end of the first sentence of subsection (1) for "84-301"; and made minor changes in phraseology, punctuation and style.

84-4606. Banks with offices in more than one county—assessment and apportionment of tax. Any state or national bank, banking corporation, or private bank, the stock, moneyed capital, or moneys and credits of which are subject to taxation under the provisions of chapter 3 and chapter 46, Title 84, Revised Codes of Montana, 1947, and which has banking offices in more than one (1) county, shall furnish to the department of revenue or its agent in each such county the information required of it by chapter 46, Title 84, Revised Codes of Montana, 1947, together with a statement of the book value of real estate owned and located in the respective counties and a statement of the deposit liability shown by the books of account of said bank at each of its said banking offices at the close of business on December 31 of the preceding year; and the aggregate tax on the stock, moneyed capital, and moneys and credits of such bank computed as provided by law shall be assessed by and be paid to the respective counties in the proportion which the amount of the deposit liability shown on the books of the office or offices of such bank located in such counties, respectively, shall bear to the total deposit liability of such bank.

History: En. Sec. 1, Ch. 72, L. 1967; amd. Sec. 88, Ch. 405, L. 1973; amd. Sec. 18, Ch. 388, L. 1975.

Title of Act

An act relating to the assessment for the purpose of taxation of bank stock,

moneyed capital, and moneys and credits, in each county wherein a bank office is located and the payment of taxes thereon; providing for the furnishing of certain information to the county assessor of each such county by the bank officials and repealing all acts and parts of acts in conflict herewith.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor.

The 1975 amendment substituted "at the close of business on December 31 of the preceding year" for "at the close of business the day next preceding the first Monday in March" in the middle of the section.

Repealing Clause

Section 2 of Ch. 72, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 72, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

CHAPTER 47—CITIES AND TOWNS—TAXATION AND LICENSE

Section

84-4701. Limitation on amount of tax for municipal purposes—distribution of funds—levy for parks, swimming pools, playgrounds, youth centers, and other purposes.
84-4701.1. All-purpose levy authorized.
84-4701.2. Maximum rate of all-purpose levy.
84-4701.3. Allocation of all-purpose levy.
84-4701.5. Certification of all-purpose levy to county officers.
84-4701.6. Extraordinary levies—additional to all-purpose levy.
84-4713. Taxes in cities and towns that have exceeded the statutory limit of indebtedness.
84-4715. Annual tax—levy and collection.
84-4716. Levy, etc., to be made under this chapter.
84-4717. Basis of taxation.
84-4718. Duty of department of revenue.
84-4719. Copies of assessment books to be furnished cities and towns.
84-4720. Charge of department for making copies.
84-4721. Equalization of taxes.
84-4726.1. Municipal sewer rates—collection—arrearages.

84-4701. (5194) **Limitation on amount of tax for municipal purposes—distribution of funds—levy for parks, swimming pools, playgrounds, youth centers, and other purposes.** The amount of taxes to be levied for general municipal or administrative purposes in cities and towns may not exceed 2.4% of the taxable value of the property of the city or town subject to taxation. The council or commission in each city or town may distribute the money collected into the funds prescribed by ordinance. For the purpose of procuring, equipping, and maintaining public parks, swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums, and combinations thereof, the council or commission in any city or town may levy, in addition to the levy for general municipal or administrative purposes, an amount not exceeding 7 mills on the dollar on the taxable value of the property to be taxed of the city or town.

History: Ap. p. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1. Ch. 175, L. 1925; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951; amd. Sec. 1, Ch. 230, L. 1969; amd. Sec. 56, Ch. 566, L. 1977. Cal. Pol. C. Sec. 4371.

Amendments

The 1969 amendment substituted "two and four-tenths (2.4%) per centum" for "two (2%) per centum" after "must not exceed" near the beginning of the section,

and "seven (7) mills" for "six (6) mills" after "not exceeding" near the end of the section.

The 1977 amendment deleted "assessed and" before "levied" in the first sentence; substituted "taxable value of the property of the city or town subject to taxation" in the first sentence for "assessed value of the taxable property of the city or town"; deleted "assess and" after "city or town may" in the last sentence; substituted "taxable value of the property to be taxed" near the end of the last sentence for "assessed value of the taxable property"; and made minor changes in phraseology, punctuation and style.

Cross-References

Multistate tax compact, sec. 84-6701.

Allocation of Construction Cost

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate proportionate share of costs among various city departments using the facility. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

84-4701.1. All-purpose levy authorized. It is the purpose of this act to authorize and empower the cities and towns of the state of Montana, at their option, to make an all-purpose annual mill levy in lieu of the multiple levies now authorized by the statutes of the state of Montana. The all-purpose mill levy shall not include the levies imposed for bonded indebtedness, to pay judgments, or special improvement district revolving funds of municipalities, which levies may be made in addition to the all-purpose levy as provided in section 84-4701.6, R. C. M., 1947. This act shall not be construed as repealing those statutes providing for multiple separate levies.

History: En. Sec. 1, Ch. 82, L. 1965; amd. Sec. 1, Ch. 226, L. 1969; amd. Sec. 1, Ch. 375, L. 1971.

Amendments

The 1969 amendment deleted "exclusive" before "annual mill levy"; and inserted the second sentence.

The 1971 amendment inserted "or special improvement district revolving funds of municipalities" in the second sentence and made minor changes in phraseology.

84-4701.2. Maximum rate of all-purpose levy. (1) Except as provided elsewhere, the cities and towns of the state of Montana may make an all-purpose annual levy upon the taxable value of all the property in the cities and towns subject to taxation for municipal purposes in lieu of the multiple levies now authorized by statute. The total of the all-purpose levy may not exceed 65 mills on the dollar. This levy may not include any levies necessary for bonded indebedness, judgments, or special improvement district revolving funds of municipalities, which levies may be made in addition to all-purpose levy as provided in 84-4701.1 and 84-4701.6. The moneys received from the all-purpose levy shall be accounted for in a common fund known as the all-purpose general fund.

(2) An amount not to exceed 5% of the moneys received from and as a part of the all-purpose levy aforesaid may be placed in a separate fund known as the capital improvement program fund to be earmarked for the replacement and acquisition of property, plant, or equipment costing in excess of $5,000 with a life expectancy of 5 years or more, provided that a capital improvement program has been formally adopted by city or town ordinance.

(3) The moneys held in the capital improvement program fund shall, whenever possible, be invested in savings or time deposits in a state or national bank insured by the federal deposit insurance corporation or in direct obligations of the United States government and credited back to the fund plus interest earned.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977.

Amendments

The 1969 amendment substituted "an all-purpose annual levy" for "an all-purpose and exclusive annual levy which does not exceed the average number of mills on the dollar levied for all purposes in the preceding three (3) years"; and added the second sentence.

The 1971 amendment substituted "all-purpose" for "multiple" in the second sentence of the first paragraph; increased the maximum levy specified in the second sentence of the first paragraph from 60 to 65 mills; inserted "or special improvement district revolving" in the second sentence of the first paragraph; added the last sentence to the first paragraph; added the second and third paragraphs; and made minor changes in phraseology.

The 1977 amendment inserted the subsection designations; substituted "Except as provided elsewhere" at the beginning of subsection (1) for "Notwithstanding the provisions of the statutes of Montana to the contrary"; substituted "taxable value" in the first sentence of subsection (1) for "assessed value"; divided the former second sentence in subsection (1) into two sentences; inserted "funds of municipalities, which levies may be made" in the third sentence in subsection (1); and made minor changes in phraseology, punctuation and style.

84-4701.3. Allocation of all-purpose levy. In the event the all-purpose levy method, provided for in section 84-4701.2, is followed in municipal financing, any municipality following it shall appropriate the levy to the several departments of the municipality in its annual budget and appropriation ordinance, or in other legal manner, as the governing body of such municipality shall deem best, provided, however, that any municipality which has adopted an urban renewal plan, may allocate the funds raised by its levy within the urban renewal area, in accordance with the provisions of its urban renewal plan.

History: En. Sec. 3, Ch. 82, L. 1965; amd. Sec. 3, Ch. 375, L. 1971; amd. Sec. 6, Ch. 287, L. 1974.

Amendments

The 1971 amendment substituted "appropriate" for "allocate"; and deleted "on a mill basis" after "the levy."

The 1974 amendment added the proviso at the end of the section pertaining to the allocation of funds by a municipality which has adopted an urban renewal plan.

84-4701.5. Certification of all-purpose levy to county officers. In the event that it is necessary to certify such a municipal levy to county officers for collection, the same shall be certified as an all-purpose levy.

History: En. Sec. 5, Ch. 82, L. 1965; amd. Sec. 4, Ch. 375, L. 1971.

Amendments

The 1971 amendment substituted "an all-purpose levy" for "a single levy for general fund purposes" at the end of the section.

84-4701.6. Extraordinary levies—additional to all-purpose levy. That otherwise authorized extraordinary levies to pay for bonded indebtedness, judgments, or special improvement district revolving funds may be made by such municipalities in addition to such all-purpose levy provided in sections 84-4701.1, 84-4701.2, 84-4701.3, 84-4701.4 and 84-4701.5 of the Revised Codes of Montana, 1947.

History: En. 84-4701.6 by Sec. 1, Ch. 145, L. 1967; amd. Sec. 5, Ch. 375, L. 1971.

Title of Act

An act to provide for authorized extraordinary levies to service and pay bonded indebtedness of such municipalities and to pay judgments obtained against them, may be made by such municipalities in addition to such all-purpose levy; and repealing all acts and parts of acts in conflict herewith.

Amendments

The 1971 amendment inserted "or special improvement district revolving funds" and made minor changes in phrasecology.

Repealing Clause

Section 2 of Ch. 145, Laws 1967 repealed all acts and parts of acts in conflict therewith.

84-4712. (5200) **Special taxes and assessments.**

Compiler's Notes

Sections 44-301 to 44-303, referred to in this section in the parent volume, were repealed by Sec. 12, Ch. 260, Laws 1967.

84-4713. (5201) **Taxes in cities and towns that have exceeded the statutory limit of indebtedness.** All taxes levied and collected or to be collected for municipal and administrative purposes by any city or town in which the indebtedness equals or exceeds the limit allowed in statute may be used in payment of current expenses during the fiscal year for which the taxes were levied, as if a special levy had been made for each of the purposes. The council of any such city or town may designate the amount of the general levy applicable to each of the purposes. The amount so designated constitutes a special fund for the special purpose of paying the expenses incurred for the purpose. The expenses shall be payable out of the fund and not otherwise. However, the aggregate of all taxes authorized for general municipal and administrative purposes may not exceed 5½% annually of the taxable value of all property subject to taxation in such city or town.

History: En. Sec. 1, Ch. 106, L. 1907; Sec. 3344, Rev. C. 1907; re-en. Sec. 5201, R. C. M. 1921; amd. Sec. 2, Ch. 175, L. 1925; amd. Sec. 53, Ch. 100, L. 1973; amd. Sec. 89, Ch. 405, L. 1973; amd. Sec. 58, Ch. 566, L. 1977.

Amendments

Chapter 100, Laws of 1973, substituted "five per cent (5%) of the value of the taxable property therein" for "the limit provided in section 6, article XIII of the constitution" in the first sentence.

Chapter 405, Laws of 1973, substituted "the limit provided in statute" for "the limit provided in section 6, article XIII of the constitution" in the first sentence.

The 1977 amendment substituted "5½% annually of the taxable value" in the last sentence for "1½% annually upon the per centum of the assessed value"; and made minor changes in phraseology, punctuation and style.

84-4715. (5203) **Annual tax—levy and collection.** The council has power to levy, and collect, annually taxes on all the property in the city or town taxable for state and county purposes, and may by ordinance provide for the levy and collection of the same.

History: En. Sec. 4860, Pol. C. 1895; re-en. Sec. 3346, Rev. C. 1907; re-en. Sec. 5203, R. C. M. 1921; amd. Sec. 90, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "equalize" after "collect"; and deleted "assessment, equalization" following "provide for the levy."

84-4716. (5204) **Levy, etc., to be made under this chapter.** Until the passage of such ordinance the levy and collection of municipal taxes are, and the proceedings for such purposes must be as provided in this chapter.

History: En. Sec. 4861, Pol. C. 1895; re-en. Sec. 3347, Rev. C. 1907; re-en. Sec. 5204, R. C. M. 1921; amd. Sec. 91, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "assessment, equalization," following "the levy"; and made a minor change in punctuation.

84-4717. (5205) **Basis of taxation.** The assessment made by the department of revenue or its agent for state and county purposes is the basis of taxation for cities and towns for the property situated therein.

History: En. Sec. 4862, Pol. C. 1895; re-en. Sec. 3348, Rev. C. 1907; re-en. Sec. 5205, R. C. M. 1921; amd. Sec. 92, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor."

84-4718. (5206) **Duty of department of revenue.** It is the duty of the department of revenue or its agent, in making the assessment book, to designate therein the real and personal property, stating each separately and distinctly, situated in cities and towns within each county in the state.

History: En. Sec. 377, 5th Div. Comp. Stat. 1887; amd. Sec. 4863, Pol. C. 1895; re-en. Sec. 3349, Rev. C. 1907; re-en. Sec. 5206, R. C. M. 1921; amd. Sec. 93, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor"; and substituted "each county in the state" for "the county" at the end of the sentence.

84-4719. (5207) **Copies of assessment books to be furnished cities and towns.** On or before the second Monday in July of each year the department or its agent must furnish to all cities of the third class and towns within each county which shall make written request for the same, on or before the first Monday in April of each year, a complete certified copy of the assessment book, so far as such assessment book pertains to property within the limits of said cities and towns.

History: En. Sec. 1, Ch. 69, L. 1911; re-en. Sec. 5207, R. C. M. 1921; amd. Sec. 94, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department or its agent" for "assessor"; and made minor changes in phraseology.

84-4720. (5208) **Charge of department for making copies.** The department may charge such cities and towns five cents per folio of one hundred words for each copy of the assessment book furnished such cities and towns as provided in the preceding section.

History: En. Sec. 2, Ch. 69, L. 1911; re-en. Sec. 5208, R. C. M. 1921; amd. Sec. 95, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department" for "assessor"; and made a minor change in phraseology.

84-4721. (5209) **Equalization of taxes.** The equalization of assessments of property made by the state department of revenue applies to the assessment of property in any city or town, and must be taken as the equalization thereof.

History: En. Sec. 4865, Pol. C. 1895; re-en. Sec. 3351, Rev. C. 1907; re-en. Sec. 5209, R. C. M. 1921; amd. Sec. 96, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "state department of revenue" for "county board of equalization"; and deleted a second sentence authorizing the reduction or refunding of city or town taxes.

84-4726.1. Municipal sewer rates—collection—arrearages. The council of any city or town operating a municipal sewer system may fix by ordinance the rates for service charges in advance or otherwise. The rates

shall be uniform for like service in all parts of the municipality and shall be as nearly as possible equitable in proportion to the services and benefits rendered. An original charge for the connecting sewer line between the lot line and the sewer main may be assessed when such connecting sewer line is installed. The charges shall be collected by the treasurer.

On or before January 15 of each year, notice shall be given by the city or town treasurer to the owners of all lots or parcels of real estate to which sewer service has been furnished prior to January 1, by the city or town, and said notice shall specify the assessment owing and in arrears at the time of giving such notice. Such notice shall be in writing and shall state the amount of such arrearage, including any penalty and interest assessed pursuant to the provisions of the city or town ordinance; that unless the same is paid by July 1 thereafter, the same will be levied as a tax against the lot or parcel of real estate to which sewer service was furnished and for which payment is delinquent as above specified. Such notice may be delivered to such owner personally, or by letter addressed to such owner at the post-office address of such owner as recorded in the office of the county assessor.

On March 1, the treasurer of the city or town shall certify and file with the county assessor a list of all lots or parcels of real estate, giving the legal description thereof, to the owners of which notices of arrearage in payments were given as above specified and which arrearage still remain unpaid, and stating the amount of such arrearage, including any penalty and interest. The county assessor shall insert the same as a tax against such lot or parcel of real estate. Provided, that in cities where the council has provided by ordinance for the collection of taxes, the city treasurer shall insert such delinquent amount, including penalty and interest, as a tax against the lot or parcel of real estate to which sewer service was furnished and payment for which is delinquent.

History: En. 84-4726.1 by Sec. 1, Ch. 411, L. 1973.

Title of Act

An act providing for collection of service charges by cities and towns operating a municipal sewer system; giving of notice to owners of real estate of delinquency in payment of service charges; and certification to the county assessor of real estate upon which service charges remain unpaid; and adding a new section 84-4726.1, R. C. M. 1947.

84-4732 to 84-4735. (5219 to 5222) Repealed.

Repeal

Sections 84-4732 to 84-4735 (Sec. 436, 5th Div. Comp. Stat. 1887; Secs. 4875 to 4878, Pol. C. 1895; Sec. 1, pp. 224, 225, L. 1897; Sec. 1, Ch. 47, L. 1937), relating to the road poll tax, were repealed by Sec. 120, Ch. 405, Laws 1973.

CHAPTER 48—FREIGHT LINE COMPANIES—TAXATION

Section
84-4818. Definitions.
84-4819. Rate of tax—situs.
84-4820. Railroad companies to withhold tax, file statements annually and remit to state—receipts—investigations—ad valorem tax basis.
84-4821. Computation of tax.
84-4822. Ad valorem tax basis—complaints—notice—testimony—hearing—refunds—valuation of cars as unit.
84-4824. Actions to recover delinquent taxes and penalties—additional taxes.

84-4818. Definitions. The following words and phrases, when used in this act, shall have the following definitions:

(a). * * * [Same as parent volume.]

(b) Department. The term "department" shall mean the state department of revenue of the state of Montana.

(c). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 137, L. 1949; amd. Sec. 152, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted subdivision (b) for a subdivision defining "board" as the state board of equalization.

84-4819. Rate of tax—situs. Every such freight line company shall pay annually for each calendar year a sum in the nature of a tax in the amount of five and one-half per cent (5-½%) of the total gross earnings received from all sources by reason of the use or operation of such cars within this state by such freight line company, which shall be in lieu of all other taxes upon such property of any freight line company so paying the same; provided, for the purpose of taxation, all cars used exclusively within the state or used partially within and partially without the state, are hereby declared to have situs within the state, the value thereof for such taxation to be determined as provided for in this act.

History: En. Sec. 2, Ch. 137, L. 1949; amd. Sec. 1, Ch. 346, L. 1969.

Amendments

The 1969 amendment raised the tax rate from "five per cent (5%)" to "five and one-half per cent (5½%)" per year.

Cross-References

Multistate tax compact, sec. 84-6701.

84-4820. Railroad companies to withhold tax, file statements annually and remit to state—receipts—investigations—ad valorem tax basis. Every railroad company so using or leasing said cars, upon payment therefor to such company shall withhold from such payment five and one-half per cent (5½%) of as much thereof as shall constitute gross earnings of such freight line company within this state. On or before March 1, 1970, such railroad company shall make and file with the department a consolidated statement in a form to be prescribed by the department of revenue, showing the amount of such payments for the next preceding calendar year ending December 31, 1969, and the amounts so withheld and due the state of Montana. A like report shall be made on or before March 1 of each year thereafter; provided, however, that for good cause the department may grant a reasonable extension for filing, but not to exceed thirty (30) days. Such railroad company at the time of filing such statement shall remit the amounts so withheld and due the state of Montana. Upon receipt of such payment, the department shall issue its receipt, in triplicate, one (1) copy of which shall be mailed to such railroad company, one (1) to the freight line company for which such tax is paid, and one (1) to be retained in the office of the state department of revenue. The mailing of such receipt to such freight line company shall constitute notice of the filing of said statement and payment of said tax. If any railroad company shall fail to make or file such report, or if the state department of revenue be dissatisfied with any report filed, the de-

partment of revenue shall have the power to conduct a hearing and investigation for the purpose of ascertaining from whatever sources to which it has access, the gross earnings of such freight line company from the use or operation of such cars within the borders of this state, and in conducting such hearing and investigation, the department of revenue shall have power, by subpoena, to require officers, agents, employees or receivers of such railroad company, or of such freight line company, to attend before the state department of revenue, and to bring with him, or them, for inspection by the department, any books, papers, or documents in his or their possession, or under his or their control, in any manner affecting said tax, and to testify under oath concerning any matter relating to the organization or business of such freight line company within this state. Any person who shall fail, neglect or refuse to attend before the department, when subpoenaed so to do, or who shall fail, neglect, or refuse to bring with him and submit for inspection by the department any books, papers, or documents in his possession or under his control affecting the organization or business of such freight line company within this state, or who shall refuse to testify, or refuse to answer any question which may be asked him concerning the organization or business, shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months. Every freight line company, as hereinbefore defined, shall be liable for the payment of the difference, if any, between five and one-half per cent (5½%) of all gross earnings in this state and the amounts withheld and remitted to the state of Montana by railroads, and shall be liable for the payment of any additional taxes which the department may find due under its authority to raise or lower the rate to conform to the taxes which would be payable if the cars were taxed on an ad valorem basis.

History: En. Sec. 3, Ch. 137, L. 1949 amd. Sec. 2, Ch. 346, L. 1969; amd. Sec. 1, Ch. 339, L. 1971; amd. Sec. 153, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "five and one-half per cent (5½%)" for "five per cent (5%)" in the first and last sentences; and in the second sentence, substituted "1970" for "1950" and "1969" for "1949."

The 1971 amendment added the proviso to the third sentence; and made minor changes in phraseology and style.

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section.

Effective Dates

Section 3 of Ch. 346, Laws 1967 read "This act is effective for all taxable years commencing after December 31, 1968."

Section 2 of Ch. 339, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

84-4821. Computation of tax. Upon the filing of the reports herein provided for, the department shall compute and determine the amount of the tax and, on or before May 1, notify such railroad company and freight line company if such report or payment of tax be incorrect or insufficient, and such railroad company shall be liable for any additional tax found to be owing the state of Montana.

History: En. Sec. 4, Ch. 137, L. 1949; amd. Sec. 154, Ch. 516, L. 1973; amd. Sec. 4, Ch. 36, L. 1977.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

The 1977 amendment deleted a second sentence which provided that if no report was filed, the department could ascertain from whatever sources it had access the gross earnings of such freight line company within the state from the use or operation of such cars by the railroad company, or if the gross earnings could not be ascertained, the department could estimate the gross earnings of the freight line, and the railroad company would be liable for the tax and the penalties otherwise provided for; and made minor changes in punctuation and style.

Repealing Clause

Section 5 of Ch. 36, Laws 1977 read "Sections 84-1704, 84-1705, 84-1706, 84-1708, 84-2307, 84-2308, 84-2309, 84-2504, 84-2506, 84-2507, 84-2508, 84-2604, 84-2606, 84-2607, 84-2608, 84-4823, 84-4825, and 84-4826, R. C. M. 1947, are repealed."

84-4822. Ad valorem tax basis—complaints—notice—testimony—hearing—refunds—valuation of cars as unit. It is hereby declared to be the intention of the legislature that the tax herein imposed be not greater than the amount of tax such freight line company would pay if its cars were taxed on an ad valorem basis. No tax other than as in this act imposed shall be assessed against the business or income of any such freight line company. Any such freight line company or railroad company, on or before June 1st of the year in which the tax herein imposed has been paid, may file written complaint with the state tax appeal board concerning the correctness of the rate used, or the correctness of the amount of the tax imposed, or any other matter affecting the complainant under the provisions of this act. Upon filing such complaint, the state tax appeal board shall set the same for hearing, and shall give written notice thereof to the complainant at least ten (10) days before the date set for hearing thereon. Upon the hearing of any such complaint, the state tax appeal board shall take testimony to determine whether the amount of the tax, as computed and determined by the department of revenue, is greater than the general ad valorem tax for all purposes would be on the cars of such freight line company subject to taxation in Montana, if assessed and taxed on an ad valorem basis. In such cases the state tax appeal board shall have the power, and it shall be its duty, to lower or raise the rates herein specified to conform to the facts disclosed at such hearing and to make the amount of the tax due equivalent to such ad valorem tax. If the state tax appeal board shall then determine that the amount of the tax imposed and collected was excessive, the claimant shall be entitled to a refund to the extent of such excess. Within six (6) months after such determination the claimant may present to the state department of revenue a sworn claim for such refund, setting forth the amount thereof. The state auditor shall draw his warrant upon the state treasurer for the amount of such claim and the same shall be paid out of the freight line company tax fund created by this act, in the same manner as other claims against the state are paid. In order to determine the amount of tax such freight line company would pay, the department may value all cars of any such company as a unit and allocate to Montana that proportion of the total value which the Montana car mileage bears to the total car mileage of the cars of any such freight line company during the twelve (12) months' period ending December 31 of the preceding year, and may

then apply to such value, the average total rate of all general property taxes levied for the preceding year by the taxing authorities of the state, counties, school districts, municipalities and other taxing subdivisions for state, county, school and muncipal and other purposes.

History: En. Sec. 5, Ch. 137, L. 1949; amd. Sec. 92, Ch. 405, L. 1973.

Amendments

The 1973 amendment inserted "state tax appeal" before "board" throughout the section; deleted "which is within the jurisdiction of the board" from the end of the third sentence; substituted "department of revenue" for "board" in the middle of the fifth sentence and for "board of equalization" in the eighth sentence; deleted "If the claim is found to be correct and is approved by the board and the state board of examiners" from the beginning of the ninth sentence; and substituted "the department" for "said board" near the beginning of the last sentence.

84-4823. Repealed.

Repeal

Section 84-4823 (Sec. 6, Ch. 137, L. 1949; Sec. 155, Ch. 516, L. 1973), relating to penalty for nonpayment, was repealed by Sec. 5, Ch. 36, Laws 1977.

84-4824. Actions to recover delinquent taxes and penalties—additional taxes. If the taxes and penalties provided for in this act to be paid by the railroad company on the property of such freight line company remain unpaid more than ninety (90) days from the due date, the department shall cause an action to be brought to recover the amount of such delinquent taxes and penalties in the district court of any county within the state of Montana in which service can be had on the railroad company which is liable for the payment of such taxes or penalties, or in which the property of such delinquent railroad company can be seized under attachment or garnishment proceedings in the manner prescribed by law. In the event the state tax appeal board under its authority to raise or lower the rate of the taxes which would be payable on the cars of such freight line company if taxed upon an ad valorem basis, shall, after a hearing as herein provided, find taxes due from any such freight line company in excess of the five per cent (5%) of all gross revenue in this state which is required to be paid by the railroad companies, such additional tax as so determined shall be due and payable by the freight line company upon which the assessment is made, and if such tax shall remain unpaid for more than ninety (90) days after notification of such assessment by the state tax appeal board, the board shall cause an action to be brought to recover the amount of such additional tax in the district court of any county within the state of Montana in which service can be had on the freight line company liable for the tax or in which the property of such delinquent freight line company can be seized under attachment or garnishment proceedings in the manner prescribed by law.

History: En. Sec. 7, Ch. 137, L. 1949; amd. Sec. 98, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" before "shall cause an action" in the middle of the first sentence; and inserted "state tax appeal" before "board" in two places in the second sentence.

84-4825, 84-4826. Repealed.

Repeal

Sections 84-4825, 84-4826 (Secs. 9, 10, Ch. 137, L. 1949; Sec. 4, Ch. 126, L. 1963; Sec. 99, Ch. 405, L. 1973; Sec. 156, Ch.

516, L. 1973), relating to disposition of tax proceeds and challenges to the correctness of determinations of the tax, were repealed by Sec. 5, Ch. 36, Laws 1977.

CHAPTER 49—INCOME TAX

Section
84-4901. Income tax—definitions.
84-4902. Rate of income tax.
84-4902.1. Surtax.
84-4903. Tax on nonresident—alternative tax based on gross sales.
84-4903.2. Deducting and withholding from payments to nonresidents—transmittal to state department of revenue—additional reports and information—rules and regulations—order for withholding payments.
84-4903.5. Monthly payment by withholding agent—exception.
84-4903.6. Modification of withholding provisions.
84-4903.7. Failure to withhold or pay—penalties.
84-4903.8. Department may require withholding agent to make return and pay tax at any time.
84-4903.9. Amounts withheld as lien against agent—priority.
84-4903.10. Rights of nonresident.
84-4903.11. Nonresident ad valorem taxpayers—list—duty of state department of revenue or its agent.
84-4905. Adjusted gross income.
84-4906. Deductions allowed in computing net income.
84-4907. Nonresident taxpayers.
84-4907.1. Veterans' bonus—exemption from income tax law.
84-4907.2. Special military exemption.
84-4908. Alternative deduction allowed in computing net income.
84-4910. Exemptions.
84-4910.1. Additional exemption for a dependent child with handicap.
84-4910.2. Physician's verification of handicap required.
84-4913. Information agents' duties.
84-4914. Returns and payment of tax—penalty and interest—refunds—credits.
84-4919. Time for filing—affidavit—forms—extensions of time for filing.
84-4920. Revision of return—time for determining tax—examination of records and persons.
84-4920.1. Suspension of running of statute of limitations—grounds.
84-4921. Oaths may be administered by director of revenue and designated employees.
84-4922. Revision—application—hearing—adjustment.
84-4923.1. Review by court.
84-4924. Penalties for violations of act.
84-4926. Soldiers' and sailors' relief.
84-4928. Levy upon and sale of property for payment of income taxes.
84-4928.1. Jeopardy assessments.
84-4929. Action by attorney general.
84-4930. Department authorized to make rules and regulations.
84-4931. Divulging information unlawful—exceptions—penalty.
84-4937. Credit allowed resident taxpayers for income taxes imposed by foreign states.
84-4938. Furnishing copy of federal return, copies of federal corrections, and filing amended return required.
84-4939. Declaration of estimated tax.
84-4940. Installment payments of estimated tax.
84-4942. Definitions.
84-4943. Deduction and withholding of tax from wages—amount.
84-4946. Quarterly payment by employer—exception.
84-4948. Annual withholding statement.
84-4950. Filing of annual statement by employer—duty.
84-4951. Amounts withheld, held in trust for state—warrants to collect.
84-4955. Rules and regulations—remedies for administration, enforcement and collection.
84-4956. Credits and refunds.
84-4958. Release of lien or partial discharge of property.
84-4959. Closing agreements.
84-4960. Purpose and definition.
84-4961. Investment credit.

84-4901. (2295.1) **Income tax—definitions.** For the purpose of this act unless otherwise required by the context:

(1) The word "department" means the state department of revenue.

(2). * * * [Same as parent volume.]

(3) The term "taxable year" means the taxpayer's taxable year for federal income tax purposes.

(4). * * * [Same as parent volume.]

(5) The word "paid" for the purposes of the deductions and credits under this act means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this act. The term "received" for the purpose of computation of taxable income under this act, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this act.

(6) and (7). * * * [Same as parent volume.]

(8) The words "foreign country" or "foreign government" mean any jurisdiction other than the one embraced within the United States, its territories and possessions.

(9). * * * [Same as parent volume.]

(10) The term "net income" means the adjusted gross income of a taxpayer less the deductions allowed by this act.

(11) The term "taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this act.

History: En. Sec. 1, Ch. 181, L. 1933; amd. Sec. 1, Ch. 166, L. 1947; amd. Sec. 1, Ch. 253, L. 1959; amd. Sec. 1, Ch. 62, L. 1967; amd. Sec. 157, Ch. 516, L. 1973.

Amendments

The 1967 amendment substituted present subsection (3) for "The words 'taxable year' mean the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this act, and include the period for which such return is made if made for a fractional part of such year under the provisions of this act or under regulations prescribed by the board. The words 'fiscal year' mean an accounting period of twelve (12) months, ending on the last day of any month other than December thirty-first"; substituted "taxable income" for "net income" wherever found in subsection (5); substituted "its territories and possessions" for "The words 'United States' include the states, the territory of Hawaii, and the District of Columbia" at the end of subsection (8); made minor style changes in subsection (8); and inserted "adjusted" before "gross" in subsections (10) and (11).

The 1973 amendment substituted subdivision (1) for a subdivision defining "board" as the state board of equalization.

Effective Date

Section 2 of Ch. 62, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

Cross-References

Corporation income tax, 84-6901 et seq.

84-4902. (2295.2) **Rate of income tax.** There shall be levied, collected and paid for each taxable year, commencing on or after December 31, 1968 upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions, as hereinafter provided, a tax at the following rates, to wit:

(a) On the first one thousand dollars ($1,000) of taxable income, or any part thereof, at the rate of two per centum (2%);

(b) On the next one thousand dollars ($1,000) of taxable income, or any part thereof, at the rate of three per centum (3%);

(c) On the next two thousand dollars ($2,000) of taxable income, or any part thereof, at the rate of four per centum (4%);

(d) On the next two thousand dollars ($2,000) of taxable income, or any part thereof, at the rate of five per centum (5%);

(e) On the next two thousand dollars ($2,000) of taxable income, or any part thereof, at the rate of six per centum (6%);

(f) On the next two thousand dollars ($2,000) of taxable income, or any part thereof, at the rate of seven per centum (7%);

(g) On the next four thousand dollars ($4,000) of taxable income, or any part thereof, at the rate of eight per centum (8%);

(h) On the next six thousand dollars ($6,000) of taxable income, or any part thereof, at the rate of nine per cent (9%);

(i) On the next fifteen thousand dollars ($15,000) of taxable income, or any part thereof, at the rate of ten per cent (10%);

(j) On any taxable income in excess of thirty-five thousand dollars ($35,000) of taxable income, or any part thereof, at the rate of eleven per cent (11%).

History: En. Sec. 2, Ch. 181, L. 1933; amd. Sec. 1, Ch. 40, Ex. L. 1933; amd. Sec. 1, Ch. 228, L. 1957; amd. Sec. 1, Ch. 265, L. 1959; amd. Sec. 1, Ch. 281, L. 1965; amd. Sec. 1, Ch. 5, Ex. L. 1967; amd. Sec. 1, Ch. 10, Ex. L. 1969.

Amendments

The 1967 amendment substantially rewrote this section, increasing the tax. For previous text, see parent volume.

The 1969 amendment, in the introductory paragraph, substituted "1968" for "1966"; inserted subdivisions (g) and (h); redesignated former subdivision (g) as subdivision (i) and raised the rate from "eight per centum (8%)" to "ten per cent (10%)"; redesignated former subdivision (h) as subdivision (j), substituted "thirty-five thousand dollars" for "twenty-five thousand dollars" after "in excess of" and raised the rate from "ten per centum (10%)" to "eleven per cent (11%)."

Tax Credit

Section 2 of Ch. 5, Ex. Laws 1967 read "After the amount of tax liability has been computed for the current taxable year, each person filing a Montana individual income tax return may subtract five per cent (5%) of the tax liability, and the amount remaining is the amount due the state of Montana." Section 2 was repealed by Section 7, Ch. 10, Ex. Laws 1969.

Effective Dates

Section 3 of Ch. 5, Ex. Laws 1967 read "This act shall be effective as to all taxable years commencing on or after December 31, 1966, whether on a calendar or fiscal year basis."

Section 4 of Ch. 5, Ex. Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 20, 1967.

Repealing Clause

Section 5 of Ch. 5, Ex. Laws 1967 repealed all acts and parts of acts in conflict therewith.

Cross-References

Multistate tax compact, sec. 84-6701.

84-4902.1. Surtax. After the amount of tax liability has been computed for all taxable years commencing on or after December 31, 1970 but before December 31, 1972, each person filing a Montana individual income tax return shall add, as a surtax, forty per cent (40%) of the tax liability, and the amount so arrived at is the amount due the state of Montana. Thereafter the surtax shall be ten per cent (10%) of the tax liability.

History: En. Sec. 2, Ch. 10, Ex. L. 1969; amd. Sec. 40, Ch. 9, 2nd Ex. L. 1971.

Compiler's Notes

Chapter 9, 2nd Ex. L. 1971 provided for a sales tax and use tax in lieu of a portion of the surtax on the income tax, subject to referendum at a special general election held on November 2, 1971. The measure failed by a vote of 154,680 against and 66,967 for.

Title of Act

An act to amend section 84-4902, R. C. M. 1947, relating to the rate of income tax; and providing for a surcharge; and changing and adding income tax brackets and rates of income tax for all taxable years commencing on or after December 31, 1968; and further amending section 84-4903.5, R. C. M. 1947, to provide for monthly payments to the state board of equalization of amounts withheld from payments to nonresidents under section 84-4903.2, R. C. M. 1947, if the amount withheld is $50 or more in each quarterly period of any year, applying changes when payments are due to payment periods beginning after June 30, 1969; and providing an effective date.

Amendments

The 1971 amendment substituted "all taxable years commencing on or after December 31, 1970 but before December 31, 1972" in the first sentence for "the current taxable year"; increased the rate specified in the first sentence from 10% to 40%; and added the second sentence.

84-4903. (2295.3) **Tax on nonresident—alternative tax based on gross sales.** (a) * * * [Same as parent volume.]

(b) Pursuant to the provisions of article III, section 2, of the Multistate Tax Compact (Title 84, chapter 67, R. C. M. 1947), every nonresident taxpayer required to file a return, and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana, and whose annual gross volume of sales made in Montana during the taxable year do not exceed one hundred thousand dollars ($100,000), may elect to pay an income tax of one-half (½) of one per cent (1%) of the dollar volume of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the taxes imposed under sections 84-4902 and 84-4902.1. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of article IV, sections 16 and 17 of the Multistate Tax Compact.

History: En. Sec. 3, Ch. 181, L. 1933; amd. Sec. 2, Ch. 253, L. 1959; amd. Sec. 1, Ch. 199, L. 1963; amd. Sec. 1, Ch. 15, L. 1971.

Amendments

The 1971 amendment added subsection (b) providing for an alternative tax for nonresident taxpayers.

Effective Dates

Section 2 of Ch. 15, Laws 1971 read "This act is effective for taxable years beginning on and after January 1, 1971."

Section 3 of Ch. 15, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 2, 1971.

Cross-References

Multistate tax compact, sec. 84-6701.

84-4903.1. Repealed.

Repeal

Section 84-4903.1 (Sec. 1, Ch. 208, L. 1959; Sec. 158, Ch. 516, L. 1973), relating to withholding tax on payments to nonresidents, was repealed by Sec. 8, Ch. 34, Laws 1977.

84-4903.2. Deducting and withholding from payments to nonresidents—transmittal to state department of revenue—additional reports and information—rules and regulations—order for withholding payments. Every person, firm, corporation, association, partnership, or fiduciary doing

business in or having income in the state of Montana, including the state of Montana, its agencies, and instrumentalities, counties, cities, towns, school districts, and municipal corporations of every kind, which knowingly makes payments of any kind to any nonresident of the state of Montana for services performed within the state of Montana other than those described in sections 84-4942 and 84-4943, or for casual sales of property, either real or personal, located within the state of Montana, or any prizes or winnings payable from or within the state of Montana, or hiring or having a contract with any nonresident of a temporary nature to be carried out within the state of Montana, shall deduct from such payment or payments an amount to be set by the state department of revenue, not to exceed three per cent (3%) of such payment, which shall be transmitted by him to the state department of revenue as partial payment of such nonresident's income tax.

Upon finding that reports and information, in addition to that now required by law or regulation, should be filed in order to ensure the collection of Montana state income tax on payment to nonresidents for leases, rentals or royalties derived from property located within the state of Montana, the department of revenue may adopt rules and regulations requiring the filing of such reports and information.

If upon notice to a nonresident taxpayer and hearing the department finds that withholding should be made on payments to the taxpayer for leases, rentals or royalties derived from property located within the state of Montana in order to ensure the collection of Montana state income tax, it may order withholding on such payments in an amount equal to the tax liability of the nonresident taxpayer. Such order shall be binding upon all withholding agents as hereinafter described who shall receive a copy thereof, by mail or otherwise, until such agent shall receive a copy of an order of the department terminating such withholdings as to the nonresident taxpayer.

History: En. Sec. 2, Ch. 208, L. 1959; amd. Sec. 1, Ch. 154, L. 1961; amd. Sec. 159, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in five places.

84-4903.5. Monthly payment by withholding agent—exception. Withholding agents required to deduct and withhold tax payments under the provisions of section 84-4903.2 shall remit such payments monthly to the state department of revenue for each monthly period on or before the fifteenth day of the month following the close of such monthly period, except that payments for the month of December shall be made on or before the following January 31, payments for the month of March shall be made on or before the following April 30, payments for the month of June shall be made on or before the following July 31, and payments for the month of September shall be made on or before the following October 31.

Provided, however, that when the aggregate total amount of the tax withheld under the provisions of section 84-4903.2 shall amount to less than fifty dollars ($50) in each quarterly period of any year, such with-

holding agent shall not be required to file the monthly returns or to make the monthly payments last hereinabove provided for, but in lieu thereof such withholding agent shall, on or before February fifteenth of the year next succeeding that in which such payments were withheld, file an annual return in such form as shall be determined by the department, and shall pay therewith the amount required by this act to be deducted and withheld by such withholding agent from all payments paid during the preceding calendar year.

History: En. Sec. 5, Ch. 208, L. 1959; amd. Sec. 2, Ch. 154, L. 1961; amd. Sec. 3, Ch. 10, Ex. L. 1969; amd. Sec. 160, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "monthly" for "quarterly" wherever appearing in the section; in the first paragraph, substituted "fifteenth day of the month" for "last day of the month," and added the exception; and, in the second paragraph, substituted "fifty dollars ($50)" for "ten dollars ($10)."

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the first paragraph and near the end of the second paragraph.

Effective Dates

Section 4 of Ch. 10, Ex. Laws 1969 read "Section 1 [84-4902] and section 2 [84-4902.1] of this act shall be effective as to all taxable years commencing on or after December 31, 1968, whether on a calendar or fiscal year basis."

Section 5 of Ch. 10, Ex. Laws 1969 read "Section 3 [84-4903.5] of this act shall be effective as to all payment periods beginning after June 30, 1969."

Section 6 of Ch. 10, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

Repealing Clauses

Section 7 of Ch. 10, Ex. Laws 1969 read "Section 2 of chapter five, extraordinary session laws of Montana, 1967 is repealed."

Section 8 of Ch. 10, Ex. Laws 1969 repealed all acts and parts of acts in conflict therewith.

84-4903.6. Modification of withholding provisions. The conditions set forth in section 84-4903.2 may be modified by the state department of revenue provided:

(a) The withholding agent shall ensure the department by bond or deposit of securities subject to approval by the state treasurer, or cash which shall not bear interest, that he will comply with the withholding requirements in so far as his obligation as a withholding agent is concerned, or

(b) The nonresident taxpayer shall furnish to the state department of revenue under such rules and regulations as it may prescribe an affidavit as to the correct amount of taxable income subject to the provisions of this act, in which case the state department of revenue shall determine the amount to be withheld.

History: En. Sec. 6, Ch. 208, L. 1959; amd. Sec. 161, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

84-4903.7. Failure to withhold or pay—penalties. If any withholding agent knowingly fails to withhold or pay to the state department of revenue any sums required by this act, or any order made pursuant to this act, to be withheld and paid, the same additions to the amount of such tax shall be imposed and added as those specified in section 84-4924 with respect to failure to make a return of income or to pay any income tax; and any individual, corporation or partnership, or any officer or

employee thereof, who, with intent to evade any tax or any requirement of this act, or who, with like intent, files or supplies any false or fraudulent statement or information, shall be liable to the same penalties as those imposed by section 84-4924 with respect to filing or supplying any false or fraudulent statement or information with respect to income taxes.

History: En. Sec. 7, Ch. 208, L. 1959; amd. Sec. 3, Ch. 154, L. 1961; amd. Sec. 162, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-4903.8. Department may require withholding agent to make return and pay tax at any time. If the department of revenue in any case has reason to believe that the collection of the tax provided for in 84-4903.2 is in jeopardy, it may require the withholding agent to make such return and pay such tax at any time.

History: En. Sec. 8, Ch. 208, L. 1959; amd. Sec. 163, Ch. 516, L. 1973; amd. Sec. 4, Ch. 34, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

The 1977 amendment deleted "state" before "department of revenue"; and substituted "84-4903.2" for "this section."

84-4903.9. Amounts withheld as lien against agent—priority. In addition to the penalties above-provided if any withholding agent shall withhold any sums required to be withheld and paid over to the state department of revenue under this act, the amount of the sums so withheld shall constitute a first lien against all property, real and personal, tangible and intangible, of the withholding agent, which lien shall take precedence over all others, it being the intention of this act that the funds withheld by the withholding agent shall be considered funds held in trust by the withholding agent.

History: En. Sec. 9, Ch. 208, L. 1959; amd. Sec. 164, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle of the section.

84-4903.10. Rights of nonresident. No nonresident taxpayer shall have any right of action against a withholding agent on account of any moneys withheld and paid over to the state department of revenue under this act, but nothing in this section shall be construed as removing any legal rights or remedies of such nonresident taxpayer for return of any tax erroneously or illegally collected or for any refund that may be due him.

For the purposes of any contract, leases or other obligations, any sum withheld pursuant to this act shall be deemed to have been paid to the nonresident at the time of such withholding.

History: En. Sec. 10, Ch. 208, L. 1959; amd. Sec. 165, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the first paragraph.

84-4903.11. Nonresident ad valorem taxpayers—list—duty of state department of revenue or its agent. It shall be the duty of the department

of revenue or its agent in every county in this state to prepare annually a list showing the names and addresses of all nonresident ad valorem taxpayers in his county, as shown on the current assessment roll, and forward such list to the state department of revenue after the completion of the roll on the second Monday in July but not later than September 30 of each year.

History: En. Sec. 11, Ch. 208, L. 1959; amd. Sec. 100, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent in" for "county assessor of"; and substituted "department of revenue" for "board of equalization" near the end of the section.

84-4903.12. Repealed.

Repeal

Section 84-4903.12 (Sec. 12, Ch. 298, L. 1959; Sec. 166, Ch. 516, L. 1973), relating to lists of grain loan filings furnished to department, was repealed by Sec. 1, Ch. 21, Laws 1977, effective March 7, 1977.

84-4903.13. Repealed.

Repeal

Section 84-4903.13 (Sec. 13, Ch. 208, L. 1959; Sec. 167, Ch. 516, L. 1973), relating to making rules and regulations, was repealed by Sec. 8, Ch. 34, Laws 1977.

84-4905. (2295.5) **Adjusted gross income.** (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, and in addition shall include the following:

(a) Interest received on obligations of another state or territory, or county, municipality, district, or other political subdivision thereof:

(b) Refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Adjusted gross income does not include the following which are exempt from taxation under this act:

(a) Interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof:

(b) All benefits received under the Federal Employees Retirement Act not in excess of three thousand six hundred dollars ($3,600).

(c) All benefits paid under the Montana Teachers Retirement Act which are specified as exempt from taxation by section 75-6215.

(d) All benefits paid under the Montana Public Employees Act which are specified as exempt from taxation by section 68-1303.

(e) All benefits paid under the Montana Highway Patrol Retirement Act which are specified as exempt from taxation by section 31-221.

(f) Montana income tax refunds or credits thereof.

(g) All benefits paid under sections 11-1925, 11-1926, and 11-1927 to retired and disabled firemen, their surviving spouses and orphans.

(h) All benefits paid by first or second class cities for the policemen's retirement system provided for by the Metropolitan Police Law.

(3) * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 181, L. 1933; amd. Sec. 1, Ch. 167, L. 1947; amd. Sec. 1, Ch. 260, L. 1955; amd. Sec. 1, Ch. 58, L. 1963; amd. Sec. 1, Ch. 129, L. 1965; amd.

Sec. 1, Ch. 236, L. 1971; amd. Sec. 1, Ch. 345, L. 1971; amd. Sec. 1, Ch. 158, L. 1975; amd. Sec. 1, Ch. 411, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 158 and once by Ch. 411. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Section 68-1303, referred to at the end of subdivision (2)(d), was repealed by Sec. 63, Ch. 323, Laws of 1973. For similar provision in present law, see sec. 68-2502.

Amendments

Chapter 236, Laws of 1971, added "district, or other political subdivision thereof" to the end of subdivision (1) (a); added "the state of Montana, county, municipality, district, or other political subdivision thereof" to the end of subdivision (2) (a); and made minor changes in phraseology.

Chapter 345, Laws of 1971, deleted former subdivision (2) (b); and redesignated former subdivisions (c), (d), (e), (f), and (g) of subsection (2) as subdivisions (b), (c), (d), (e), and (f), respectively.

Chapter 158, Laws of 1975, substituted "section 75-6215" for "section 75-2713" in subdivision (2)(c); and added subdivision (2)(g).

Chapter 411, Laws of 1975, added subdivision (2)(h).

Effective Dates

Section 2 of Ch. 236, Laws 1971 read "The provisions of this act shall apply to all taxable years commencing on or after December 31, 1970, whether on a calendar or fiscal year basis."

Section 3 of Ch. 236, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

Section 2 of Ch. 345, Laws 1971 read "For the taxable year beginning on and after January 1, 1971, the amendment to Section 1 of the act is effective in accordance with Public Law 91-156, Section 1 (12 U. S. C. 548 (5)).

"For taxable years beginning on and after January 1, 1972, the amendment to Section 1 of this act is effective in accordance with Public Law 91-156, Section 2 (12 U. S. C. 548)."

Section 3 of Ch. 345, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Section 2 of Ch. 158, Laws 1975 read "This act shall be effective for all taxable years commencing with the taxable year 1975."

Section 2 of Ch. 411, Laws 1975 read "This act shall be effective for all taxable years beginning after December 31, 1974."

Military Retirement Pay

Subdivision 2(c) of this section allows taxpayer to exempt the first $3600 of his military retirement pay from state income tax liability; legislature used "the Federal Employees' Retirement Act" in its broad generic sense to include all federal legislation providing retirement benefits. Nice v. State, — M —, 507 P 2d 527.

84-4906. (2295.6) **Deductions allowed in computing net income.** In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(i) items provided for in 84-4909;

(ii) state income tax paid;

(b) federal income tax paid within the taxable year.

(c) child and dependent care expenses determined in accordance with the provisions of section 214 of the Internal Revenue Code of 1954 that were in effect for the taxable year that began January 1, 1974.

(d) that portion of an energy-related investment allowed as a deduction under 84-7403.

History: En. Sec. 6, Ch. 181, L. 1933; amd. Sec. 2, Ch. 167, L. 1947; amd. Sec. 2, Ch. 260, L. 1955; amd. Sec. 1, Ch. 102, L. 1977; amd. Sec. 2, Ch. 574, L. 1977; amd. Sec. 5, Ch. 576, L. 1977.

Compiler's Notes

Section 6, Ch. 576, Laws 1977, provides: "Legislative intent. It is the intent of the legislature that no deduction under this act be allowed for capital investment for an energy conservation practice in the new construction of a building if that capital investment would have been made under established standards of new construction. The department of revenue shall adopt rules to implement this legislative intent. Such rules shall be based on the best currently available methods of analysis, including those of the national bureau of standards, the department of housing and urban development, and other federal agencies and professional societies and materials developed by the department of revenue. Provisions shall be made for an annual updating of rules and standards as required."

This section was amended three times in 1977 by Chs. 102, 574, and 576. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

Chapter 102, Laws of 1977, added subdivision (c); and made minor changes in phraseology, punctuation and style.

Chapter 574, Laws of 1977, substituted the exception provision in subdivision (a) for "except that state income tax paid shall not be deductible and also subject to the exceptions provided in section 84-4909, relating to items not deductible"; and made minor changes in phraseology and punctuation.

Chapter 576, Laws of 1977, added subdivision (d).

Effective Date

Section 2 of Ch. 102, Laws 1977 read "This act is effective upon passage and approval, and the amendment provided for shall apply to taxable years beginning after December 31, 1975." Approved March 25, 1977.

84-4906.1, 84-4906.2. Repealed.

Repeal

Sections 84-4906.1, 84-4906.2 (Secs. 1, 2, Ch. 229, L. 1974), relating to definitions and deductions, were repealed by Sec. 1, Ch. 158, Laws 1977, effective March 29, 1977 and applicable to taxable years beginning on and after January 1, 1975.

84-4907. (2295.7) **Nonresident taxpayers.** In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state, but shall not include income from annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations, or dividends on stock of corporations; except to the extent to which the same shall be a part of income from any business, trade, profession or occupation carried on in this state. Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules and regulations prescribed by the state department of revenue.

In the case of a taxpayer other than a resident of this state, the deductions allowed in computing net income shall be restricted to those directly connected with the production of Montana income. A temporary resident shall be allowed those deductions allowed a resident to the extent that such deductions were actually incurred or expended in the state of Montana during the course of his residency.

History: En. Sec. 7, Ch. 181, L. 1933; amd. Sec. 1, Ch. 28, L. 1937; amd. Sec. 1, Ch. 7, L. 1939; amd. Sec. 1, Ch. 63, L. 1949; amd. Sec. 1, Ch. 17, L. 1951; amd. Sec. 1, Ch. 111, L. 1953; amd. Sec. 3, Ch. 260, L. 1955; amd. Sec. 1, Ch. 237, L. 1963; amd. Sec. 1, Ch. 270, L. 1965; amd. Sec. 168, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the first paragraph.

Cross-References

Multistate tax compact, sec. 84-6701.

84-4907.1. Veterans' bonus—exemption from income tax law. All payments made under the World War I Bonus Law, Korean Bonus Law

and the Veterans' Bonus Law, are hereby exempt from taxation under the income tax laws of the state of Montana, and any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department, in the same manner as other income tax refund claims are paid.

History: En. Sec. 1, Ch. 43, L. 1953; amd. Sec. 1, Ch. 227, L. 1957; amd. Sec. 1, Ch. 4, L. 1965; amd. Sec. 169, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the end of the section.

84-4907.2. Special military exemption. The salary received from the armed forces by residents of Montana, who are serving on active duty in the regular armed forces, and who entered into active duty from Montana, is exempt from state income tax.

History: En. 84-4907.2 by Sec. 1, Ch. 326, L. 1975.

Title of Act

An act to exempt salaries of resident military persons from the state income tax; and providing an effective date.

Effective Date

Section 2 of Ch. 326, Laws 1975 read "This act is effective for all taxable years after December 31, 1974."

84-4908. (2295.8) **Alternative deduction allowed in computing net income.** In the case of a resident individual, a standard deduction equal to ten per cent (10%) of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under section 84-4906, R. C. M. 1947. The maximum standard deduction shall be five hundred dollars ($500) except in the case of a single joint return of husband and wife the maximum standard deduction shall be one thousand dollars ($1,000). The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

History: En. Sec. 8, Ch. 181, L. 1933; amd. Sec. 1, Ch. 207, L. 1949; amd. Sec. 1, Ch. 187, L. 1953; amd. Sec. 4, Ch. 260, L. 1955; amd. Sec. 1, Ch. 202, L. 1969; amd. Sec. 1, Ch. 357, L. 1971.

Amendments

The 1969 amendment, in the first sentence, deleted "prior to the allowance of any deductions provided for in section 84-4906" after "adjusted gross income"; substituted the present second sentence for former provision which was similar to the second sentence save for the exception; substituted, in the fourth sentence, "either the husband or the wife" for "a husband or wife" and "one of the spouses" for "the other spouse" and deleted "on the basis of net income computed" after "determined"; and added the last sentence.

The 1971 amendment deleted "except the deduction allowed for federal income taxes under paragraph (b) of that section" from the end of the second sentence.

Effective Dates

Section 2 of Ch. 202, Laws 1969 read "This act is effective as to taxable years ending on and after December 31, 1968."

Section 2 of Ch. 357, Laws 1971 read "The provisions of this act shall be effective for taxable years beginning on and after January 1, 1971."

Section 3 of Ch. 357, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

84-4910. (2295.10) **Exemptions.** (a) * * * [Same as parent volume.]

(b) Taxpayer and Spouse. An exemption of six hundred fifty dollars ($650) shall be allowed for taxable years beginning after December 31, 1973 for the taxpayer; and an additional exemption of six hundred fifty dollars ($650) shall be allowed for taxable years beginning after December 31, 1973 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(c) Additional Exemption for Taxpayer or Spouse Aged Sixty-five (65) or More. (1) For taxpayer. An additional exemption of six hundred fifty dollars ($650) shall be allowed for taxable years beginning after December 31, 1973 for the taxpayer if he has attained the age of sixty-five (65) before the close of his taxable year.

(2) For spouse. An additional exemption of six hundred fifty dollars ($650) shall be allowed for taxable years beginning after December 31, 1973 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse has attained the age of sixty-five (65) before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(d) Additional Exemption for Blindness of Taxpayer or Spouse. (1) For taxpayer. An additional exemption of six hundred fifty dollars ($650) shall be allowed for taxable years beginning after December 31, 1973 for the taxpayer if he is blind at the close of his taxable year.

(2) For spouse. An additional exemption of six hundred fifty dollars ($650) shall be allowed for taxable years beginning after December 31, 1973 for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year such determination shall be made as of the time of such death.

(3) * * * [Same as parent volume.]

(e) Additional Exemption for Dependents. (1) In general. An exemption of six hundred fifty dollars ($650) shall be allowed for taxable years beginning after December 31, 1973 for each dependent:

(A) Whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than six hundred fifty dollars ($650) shall be allowed for taxable years beginning after December 31, 1973, or

(B) * * * [Same as parent volume.]

(2) to (4) * * * [Same as parent volume.]

(f) to (i) * * * [Same as parent volume.]

History: En. Sec. 10, Ch. 181, L. 1933; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959; amd. Sec. 2, Ch. 199, L. 1963; amd. Sec. 1, Ch. 363, L. 1974.

Amendments

The 1974 amendment increased the allowance for personal exemption for taxable years beginning after December 31, 1973 from $600 to $650.

84-4910.1. Additional exemption for a dependent child with handicap. (1) In lieu of the exemption in 84-4910(3)(a), an exemption for twice the amount allowed for dependents shall be allowed for taxable years beginning after December 31, 1976, for each dependent child with a handicap.

(2) In order to be eligible for the exemption, a dependent child with a handicap must, for the taxable year of the taxpayer, have as his principal place of abode the home of the taxpayer, and have a permanent handicap of great enough severity that it constitutes not less than 50% disability to the body as a whole. An exemption may be allowed for a dependent with a permanent handicap after he reaches the age of majority if he continues to be a dependent.

History: En. 84-4910.1 by Sec. 1, Ch. 500, L. 1977.

Title of Act

An act to provide for an income tax exemption for parents of a dependent child with a handicap.

84-4910.2. Physician's verification of handicap required. A taxpayer claiming the exemption provided for in 84-4910.1 must provide with his income tax statement written documentation by a licensed physician that the handicap qualifies under section 1 herein.

History: En. 84-4910.2 by Sec. 2, Ch. 500, L. 1977.

Effective Date

Section 3 of Ch. 500, Laws 1977 read "This act applies to taxable years beginning after December 31, 1976."

84-4913. (2295.13) **Information agents' duties.** Every information agent shall make return to the department of complete information concerning the following distributions made for any individual during the taxable year, upon which no withholding tax has been deducted:

(1) Sums in excess of ten dollars ($10) distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code of 1965 or as that section may be amended, and payments made under a retirement plan covering an owner-employee as defined in section 401 (c) (3) of the Internal Revenue Code of 1965 or as that section may be amended;

(2) Interest, other than that specified in subsection (1) of this section, rents, royalties, salaries, wages, prizes, awards, annuities, pensions and other fixed or determinable gains, profits and income in excess of six hundred dollars ($600), except interest coupons payable to the bearer.

The return should be made under the regulations and in the form and manner prescribed by the department, provided, however, that for ease of reporting, the form shall be as nearly identical to the comparable federal form as possible.

History: En. Sec. 13, Ch. 181, L. 1933; amd. Sec. 7, Ch. 260, L. 1955; amd. Sec. 1, Ch. 205, L. 1967; amd. Sec. 170, Ch. 516, L. 1973.

Compiler's Notes

The Internal Revenue Code, referred to in subsection (1), is codified as Tit. 26 of the United States Code.

Amendments

The 1967 amendment completely rewrote this section. For previous text, see parent volume.

The 1973 amendment substituted "department" for "board" in the preliminary clause and in the final paragraph.

84-4914. (2295.14) **Returns and payment of tax—penalty and interest—refunds—credits.** (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than $720, and married individuals not filing separate returns and having a combined gross income for the taxable year of more than $1,445, shall be liable for a return to be filed on such forms and according to such rules and regulations as the department of revenue may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by $650 for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under 84-4910(c) and (d). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 84-4910(b), (c) and (d), as prorated according to paragraph (i) of said section.

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired, unless the department so consents.

(3) * * * [Same as parent volume.]

(4) All taxpayers, including, but not limited to those subject to the provisions of 84-4939 and 84-4943, shall compute the amount of income tax payable and shall at the time of filing the return required by this act, pay to the department any balance of income tax remaining unpaid after crediting the amount witheld as provided by 84-4943, and/or any payment made by reason of an estimated tax return provided for in 84-4939; provided however, the tax so computed is greater by $1 than the amount withheld and/or paid by estimated return as provided in this act.

If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within 30 days after notice of the amount of the tax as computed with interest added at the rate of 9% per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement,

provided the deficiency is paid within 30 days after the first notice of the amount is mailed to the taxpayer.

If payment is not made within 30 days or if the understatement is due to negligence on the part of the taxpayer, but without fraud, there shall be added to the amount of the deficiency 5% thereof, provided, however, that no deficiency penalty shall be less than $2. Interest will be computed at the rate of 9% per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in this subdivision, the interest shall in all cases be computed from the date the return and tax was originally due as distinguished from the due date as it may have been extended to the date of payment.

If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of 9% per annum from the time when the return was originally required to be filed to the time of payment.

History: En. Sec. 14, Ch. 181, L. 1933; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959; amd. Sec. 1, Ch. 201, L. 1963; amd. Sec. 1, Ch. 347, L. 1969; amd. Sec. 1, Ch. 450, L. 1973; amd. Sec. 171, Ch. 516, L. 1973; amd. Sec. 1, Ch. 159, L. 1977.

Amendments

The 1969 amendment, in subsection (1), substituted "not filing a joint return with his or her spouse and" for "filing a separate return" and "not filing separate returns" for "filing a joint return"; in subsection (2), added the last sentence; in subsection (4), made minor changes in punctuation; and in subsection (6), raised the interest rate on delinquent income taxes from "six per centum (6%)" per annum to "nine per centum (9%)."

Chapter 450, Laws of 1973, increased the amounts of income specified in the first sentence from $600 and $1,200 to $665 and $1,330; added the second and third sentences to subsection (1); and made minor changes in phraseology and punctuation.

Chapter 516, Laws of 1973, substituted references to the department of revenue for references to the state board of equalization throughout the section.

The 1977 amendment increased the minimum gross incomes above which a return must be filed from $665 to $720 for individual returns and from $1,330 to $1,445 for joint returns; increased the amount specified in the second sentence of subsection (1) from $600 to $650; and made minor changes in style.

Effective Dates

Section 2 of Ch. 450, Laws 1973 read "This act shall be effective for all taxable years ending on and after December 31, 1972."

Section 3 of Ch. 450, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 23, 1973.

Section 2 of Ch. 159, Laws 1977 read "This act is effective on its passage and approval and shall apply to returns for tax years ending on or after December 31, 1976." Approved March 29, 1977.

84-4915. (2295.15) **Exemption allowed nonresident, etc.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-4919. (2295.19) **Time for filing—affidavit—forms—extensions of time for filing.** Returns shall be made to the department on or before the fifteenth day of the fourth month following the close of the taxpayer's fiscal year, or, if the return is made on the basis of the calendar year, then the return shall be made on or before the fifteenth day of April following the close of the calendar year. Each return shall set forth such facts as the department may deem necessary for the proper enforcement of this act. There shall be annexed to such return the affidavit or affirmation of the persons making the return, to the effect that the statements contained

therein are true. Blank forms of return shall be furnished by the department upon application, but failure to secure the form shall not relieve any taxpayer of the obligation to make any return required under this law. Every taxpayer liable for a tax under this law shall pay a minimum tax of one dollar ($1.00).

Effective with returns to be filed for taxable years ending on and after December 31, 1974, an automatic two (2) month extension of time for filing a return is allowed, provided that on or before the due date of the return, an application is made on forms available from the department, or in writing to the department. The department may grant an additional extension of time for filing a return whenever in its judgment good cause exists, and the department shall keep a record of every such extension and the reason therefor. Except in the case of members of the armed forces of the United States and persons living or traveling outside the United States or Puerto Rico, no extension may be granted for more than six (6) months from the due date of the return prescribed in the preceding paragraph of this section.

History: En. Sec. 19, Ch. 181, L. 1933; amd. Sec. 1, Ch. 105, L. 1935; amd. Sec. 172, Ch. 516, L. 1973; amd. Sec. 1, Ch. 340, L. 1975.

Amendments

The 1973 amendment substituted "department" for "board" in four places.

The 1975 amendment inserted "taxpayer's" before "fiscal year" in the first sentence in the first paragraph; substituted "following the close of the calendar year" at the end of the first sentence in the first paragraph for "before the fifteenth day of April in each year"; deleted second and third sentences in the first paragraph which read "The department may grant a reasonable extension of time for filing returns whenever in its judgment good cause exists and shall keep a record of every such extension and the reason therefor. Except in the case of persons who are abroad, no such extension shall be granted for more than six (6) months"; added the second paragraph; and made minor changes in phraseology.

Effective Date

Section 2 of Ch. 340, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 9, 1975.

84-4920. (2295.20) **Revision of return—time for determining tax—examination of records and persons.** If, in the opinion of the department of revenue, any return of a taxpayer is in any essential respect incorrect, it may revise such return, or if any taxpayer fails to make return as herein required, the department is authorized to make an estimate of the taxable income of such taxpayer from any information in its possession, and to audit and state an account according to such return or the estimate so made by it for the taxes, penalties and interest due the state from such taxpayer. Except in the case of willfully false or fraudulent return with intent to evade the tax, the amount of tax due under any return shall be determined by the department within five (5) years after the return was made, and the department thereafter shall be barred from revising any such returns or recomputing the tax due thereon and no proceeding in court for the collection of such tax shall be instituted after the expiration of said period notwithstanding the provisions of section 84-4929. In the case of a willfully false or fraudulent return, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due, and where no return has been filed, the tax may be assessed at any time.

The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined, by any agent or representative designated, by it for that purpose, any books, papers or records of memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any person having knowledge in the premises, and may take testimony and require proof material for its information, with power to administer oaths to such person or persons.

History: En. Sec. 20, Ch. 181, L. 1933; amd. Sec. 1, Ch. 103, L. 1955; amd. Sec. 173, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section.

84-4920.1. Suspension of running of statute of limitations—grounds. The running of the statute of limitations provided for under section 84-4920 shall be suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by (1) written agreement signed by the taxpayer or, (2) when the taxpayer has instituted an action which has the effect of suspending the running of the federal statute of limitations, and for one (1) additional year. If the taxpayer fails to file a record of changes in federal taxable income or an amended return as required by section 84-4938, the said statute of limitations shall not apply until five years from the date the federal changes become final or the amended federal return was filed. If the taxpayer omits from gross income an amount properly includable therein which is in excess of twenty-five per cent (25%) of the amount of adjusted gross income stated in the return the said statute of limitations shall not apply for two additional years from the time specified in section 84-4920.

History: En. Sec. 2, Ch. 103, L. 1955; amd. Sec. 1, Ch. 61, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

84-4921. (2295.21) **Oaths may be administered by director of revenue and designated employees.** The director and each employee designated by him may administer an oath to any person, or take the acknowledgment of any person in respect to any report or return required by or pursuant to this act, or by the rules and regulations of the department.

History: En. Sec. 21, Ch. 181, L. 1933; amd. Sec. 101(a), Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "director and each employee designated by him" for "board and each assistant, or deputy"; and substituted "department" for "board" at the end of the section.

84-4922. (2295.22) **Revision — application — hearing — adjustment.** An application for revision may be filed with the department of revenue by a taxpayer within five (5) years from the original due date of the return. If the taxpayer is not satisfied with the action taken by the department, he

may appeal to the state tax appeal board as provided therein, which shall have authority to grant the claim or any part thereof.

History: En. Sec. 22, Ch. 181, L. 1933; amd. Sec. 1, Ch. 58, L. 1955; amd. Sec. 2, Ch. 201, L. 1963; amd. Sec. 102, Ch. 405, L. 1973; amd. Sec. 174, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 405 and once by Ch. 516. Because of the comprehensive nature of the amendment by Ch. 405, the earlier enactment, the changes made by Ch. 516 were no longer applicable. The compiler has therefore used the language of Ch. 405 above.

Amendments

Chapter 405, Laws ot 1973 completely rewrote this section. For prior law, see parent volume.

Chapter 516, Laws of 1973, substituted references to the department of revenue for references to the state board of equalization.

84-4923.1. Review by court. (1) The determination of the state tax appeal board may be reviewed in the district court for Lewis and Clark County or the county in which the taxpayer resides or has his principal office or place of business by a complaint filed by the taxpayer or the department of revenue within 6 months after the receipt of notice of the decision of the state tax appeal board. Proceedings for review shall be otherwise as specified under the Montana Administrative Procedure Act.

(2) The remedies provided by this chapter for the collection of the tax shall be stayed and no assessment, distraint, or proceedings in court for collection of the taxes may be made, begun, or prosecuted until 90 days after such court action is finally determined. From any determination of such court, an appeal to the supreme court may be taken by either party.

History: En. Sec. 1, Ch. 212, L. 1957; amd. Sec. 103, Ch. 405, L. 1973; amd. Sec. 6, Ch. 155, L. 1977.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization; substituted "director of the department of revenue" for "secretary of the state board of equalization" at the end of the third sentence; and deleted "or one copy upon the chairman of the state board of equalization" at the end of the third sentence.

The 1977 amendment divided the section into subsections; substituted "tax appeal board" two places in the first sentence of subsection (1) for "department of revenue"; substituted "or" before "the department of revenue" in the first sentence of subsection (1) for "against"; substituted the second sentence of subsection (1) for two sentences which provided that upon service of summons as in a civil action the department of revenue should proceed as in other civil cases, and that service upon the director was sufficient to serve the department; and made minor changes in phraseology, punctuation and style.

84-4924. (2295.24) **Penalties for violations of act.** (1) If any person, without intent to evade any tax imposed by this act, fails to file a return of income on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be imposed a penalty of five per cent (5%) of any balance of tax unpaid with respect to such return as of its due date, but in no event shall the penalty for failure to file a return by its due date be less than five dollars ($5). The department may abate the penalty if the taxpayer establishes that the failure to file on time was due to reasonable cause and was not due to neglect on his part. If any person, without intent to evade any tax imposed by this act, fails to pay any tax on or before its due date (determined with regard to an extension of time granted for the filing of a return), there

shall be added to the tax a penalty of ten per cent (10%) of said tax, but not less than five dollars ($5), and interest shall accrue on the tax at the rate of nine per cent (9%) per annum for the entire period it remains unpaid. The department may abate the penalty if the taxpayer establishes that the failure to pay on time was due to reasonable cause and was not due to neglect on his part.

(2) If any person fails with intent to evade any tax imposed by this act, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this act there shall be added to the tax an additional amount equal to twenty-five per centum (25%) thereof, but such additional amount shall in no case be less than twenty-five dollars ($25), and interest at one (1) per centum for each month or fraction of a month during which the tax remains unpaid.

(3) Any individual, corporation or partnership, or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any tax or any requirement of this act or any lawful requirement of the department thereunder, fails to pay the tax, or to make, render, sign or verify any return, or to supply any information, within the time required by or under the provisions of this act, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars ($1,000.00), to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars ($1,000.00) or be imprisoned in the county jail not to exceed one (1) year, or both, at the discretion of the court.

(4) * * * [Same as parent volume.]

History: En. Sec. 24, Ch. 181, L. 1933; amd. Sec. 1, Ch. 163, L. 1955; amd. Sec. 3, Ch. 201, L. 1963; amd. Sec. 2, Ch. 347, L. 1969; amd. Sec. 175, Ch. 516, L. 1973; amd. Sec. 1, Ch. 65, L. 1975.

Amendments

The 1969 amendment, in subsection (1), deleted "or pay any tax if one is due" after "return of income," rewrote the penalty provision in the first sentence which formerly provided for a 5% penalty, but not less than $2; inserted the second sentence; raised the interest rate in the third sentence from 6 to 9% per year; and in subsection (2), substituted "twenty-five dollars ($25)" for "two dollars ($2.00)" after "shall in no case be less than."

The 1973 amendment substituted "department" for "board" near the beginning of subsection (3).

The 1975 amendment rewrote subsection (1). For prior text, see parent volume and 1969 and 1973 amendment notes.

Effective Date

Section 3 of Ch. 347, Laws 1967 read "This act is effective as to taxable years ending on and after December 31, 1968."

Section 2 of Ch. 65, Laws 1975 read "This act is effective upon passage and approval, and its provisions apply to taxable years ending on and after December 31, 1974."

84-4926. Soldiers' and sailors' relief. (1) The collection from any person in the military service, as defined by the Soldiers' and Sailors' Civil Relief Act of 1940, effective October 17, 1940, as amended October 6, 1942, of any tax prescribed by the state of Montana on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than 6 months after the termination

of his period of military service if such person's ability to pay such tax is materially impaired by reason of such service.

(2) No interest on any amount of tax, collection of which is deferred for any period under this act, and no penalty for nonpayment of such amount during such period shall accrue for such period of deferment by reason of such nonpayment. The running of any statute of limitations against the payment of such tax by any lawful means shall be suspended for the period of military service of any individual for whom the collection of such tax is deferred under this section and for an additional period of 1 year, beginning with the day following the period of military service.

History: En. Sec. 1, Ch. 181, L. 1943; amd. Sec. 5, Ch. 34, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

84-4928. (2295.26) **Levy upon and sale of property for payment of income taxes.** If any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the department shall issue a warrant under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the person against whom it is levied in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the department a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

History: En. Sec. 26, Ch. 181, L. 1933; amd. Sec. 1, Ch. 172, L. 1947; amd. Sec. 176, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in four places.

84-4928.1. Jeopardy assessments. If the state department of revenue finds that the assessment or collection of the tax or a deficiency for any taxable year will be jeopardized in whole or in part by delay, it may mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the state department of revenue may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax based on the period declared terminated.

A jeopardy assessment is immediately due and payable and proceedings for collection may be commenced at once.

History: En. 84-4928.1 by Sec. 2, Ch. 212, L. 1967; amd. Sec. 177, Ch. 516, L. 1973.

Title of Act

An act providing an accelerated tax collection in the event it appears that a delay will jeopardize the collection of tax due the state of Montana; amending section 84-4946, R. C. M. 1947.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places in the first paragraph.

Effective Date

Section 3 of Ch. 212, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

84-4929. (2295.27) **Action by attorney general.** Action may be brought at any time by the attorney general of the state at the instance of the department, in the name of the state to recover the amount of any taxes, penalties and interest due under this act.

History: En. Sec. 27, Ch. 181, L. 1933; amd. Sec. 178, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board."

84-4930. (2295.29) **Department authorized to make rules and regulations.** The department is hereby authorized to make such rules and regulations and to require such facts and information to be reported as it may deem necessary to enforce the provisions of this act.

History: En. Sec. 29, Ch. 181, L. 1933; amd. Sec. 179, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board."

84-4931. (2295.30) **Divulging information unlawful — exceptions — penalty.** (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the department or any deputy, assistant, agent, clerk or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this act, or any other information secured in the administration of this act. It is also unlawful to divulge or make known in any manner any federal return or federal return information disclosed on any return or report required by rule of the department of revenue or under this act. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceed-

ing in any court, except in any action or proceeding under the provisions of this act, or any other taxing act, to which the department is a party, or on behalf of any party to any action or proceedings under the provisions of this act or such other act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events, the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceedings and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general, or other legal representatives of the state, of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted in accordance with the provisions of section 84-4928 and section 84-4929. Reports and returns shall be preserved for three (3) years and thereafter until the department orders them to be destroyed.

(2) * * * [Same as parent volume.]

(3) Notwithstanding the provisions of this section, the department may permit the commissioner of internal revenue of the United States, or the proper officer of any state imposing a tax upon the incomes of individuals, or the authorized representatives of either such officer, to inspect the returns of income of any individuals, or may furnish to such officer or his authorized representatives an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any individual, but such permission shall be granted or such information furnished to such officer or his representative, only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act.

(4) Further, notwithstanding any of the provisions of this section, the department shall furnish to the Montana highway patrol board all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to section 84-4910 (d), for the purpose of enabling said highway patrol board to administer the provisions of section 31-127, R. C. M. 1947.

History: En. Sec. 30, Ch. 181, L. 1933; amd. Sec. 1, Ch. 110, L. 1951; amd. Sec. 1, Ch. 253, L. 1967; amd. Sec. 180, Ch. 516, L. 1973; amd. Sec. 1, Ch. 346, L. 1977.

Amendments

The 1967 amendment added subsection (4).

The 1973 amendment substituted "department" for "board" in five places.

The 1977 amendment inserted the second sentence of subsection (1).

84-4937. Credit allowed resident taxpayers for income taxes imposed by foreign states. Subject to the following conditions, residents of this state shall be allowed a credit against the taxes imposed by this

act for income taxes imposed by and paid to another state or country on income taxable under this act.

(1) and (2). * * * [Same as parent volume.]

(3) The allowable credit shall be computed by formula to be prescribed by the department.

History: En. Sec. 2, Ch. 28, L. 1941; amd. Sec. 7, Ch. 253, L. 1959; amd. Sec. 181, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the end of subsection (3).

Cross-References

Multistate tax compact, sec. 84-6701.

84-4938. Furnishing copy of federal return, copies of federal corrections, and filing amended return required. Every taxpayer shall upon request of the department, furnish a copy of the return for the corresponding year which he has filed or may file with the federal government showing his net income and how obtained and the several sources from which derived. If the amount of a taxpayer's taxable income is changed or corrected by the United States Internal Revenue Service or other competent authority, the taxpayer shall report such change or correction to the department within ninety days after receiving notice thereof. If a taxpayer files an amended federal income tax return changing or correcting his federal taxable income for any taxable year, he shall also file an amended return with the state department of revenue within ninety days thereafter. The department shall supply all necessary forms and shall return all such forms to the taxpayer after they have been examined by the department, upon the request of the taxpayer.

History: En. 84-4938 by Sec. 11, Ch. 260, L. 1955; amd. Sec. 2, Ch. 61, L. 1967; amd. Sec. 182, Ch. 516, L. 1973.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization.

Effective Date

Section 3 of Ch. 61, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

84-4939. Declaration of estimated tax. (1). * * * [Same as parent volume.]

(2) In the declaration required under subsection (1) of this section the individual shall state:

(a) to (c). * * * [Same as parent volume.]

(d) Such other information as may be prescribed in rules and regulations promulgated by the department.

(3) The declaration required under subsection (1) of this section shall be filed with the department on or before April fifteenth of the taxable year except that if the requirements of subsection (1) of this section are first met:

(a) and (b). * * * [Same as parent volume.]

Provided that the declaration required to be filed during 1955 may be filed not later than October 15, 1955 if the requirements of subsection (1) of this section are fulfilled at any time prior to October 2, 1955.

(4) An individual may make amendments of a declaration filed during the taxable year under subsection (3) of this section under rules and regulations prescribed by the department.

(5) If on or before February fifteenth of the succeeding taxable year, the taxpayer files a return for the taxable year for which the declaration is required and pays in full the amount computed on their return as payable then under rules and regulations prescribed by the department.

(a) and (b). * * * [Same as parent volume.]

(6) The department shall promulgate rules and regulations governing reasonable extensions of time for filing declarations and paying the estimated tax, except in the case of taxpayers who are abroad, and no such extension shall be for more than six (6) months.

(7). * * * [Same as parent volume.]

(8) Any individual who fails to file a declaration of estimated tax as required by this section is not subject to the penalties set forth in 84-4924.

History: En. 84-4939 by Sec. 12, Ch. 260, L. 1955; amd. Sec. 183, Ch. 516, L. 1973; amd. Sec. 1, Ch. 374, L. 1977.

Amendments

The 1973 amendment substituted "department" for "board" in five places.

The 1977 amendment added subsection (8).

84-4940. Installment payments of estimated tax. (1) Estimated tax provided for in section 84-4939 shall be paid as follows:

(a) If the declaration is filed on or before April fifteenth of the taxable year the estimated tax shall be paid in two (2) equal installments. The first installment shall be paid at the time of filing of the declaration and the second or last installment shall be paid on October fifteenth of the taxable year:

(b) to (d) * * * [Same as parent volume.]

(2) to (4) * * * [Same as parent volume.]

(5) The application of this section of this act to taxable years of less than twelve (12) months shall be as prescribed in the rules and regulations promulgated by the department.

(6) * * * [Same as parent volume.]

(7) An individual who fails to pay an estimated tax as required by this section is not subject to the penalties set forth in 84-4924.

History: En. 84-4940 by Sec. 13, Ch. 260, L. 1955; amd. Sec. 184, Ch. 516, L. 1973; amd. Sec. 2, Ch. 374, L. 1977.

Amendments

The 1973 amendment substituted "department" for "board" at the end of subsection (5).

The 1977 amendment added subsection (7); and made a minor change in style.

84-4942. Definitions. When used in this act:

(a) The word "department" means the state department of revenue.

(b) to (f). * * *[Same as parent volume.]

History: En. Sec. 1, Ch. 246, L. 1955; amd. Sec. 185, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted subdivision (a) for a subdivision defining "board" as the state board of equalization.

84-4943. Deduction and withholding of tax from wages—amount. Every employer making payment of wages shall deduct and withhold upon such wages, a tax determined in accordance with the withholding tax tables which shall be prepared and issued by the department. Persons on active service as a member of the armed forces of the United States shall not be subject to the provisions of this section.

History: En. Sec. 2, Ch. 246, L. 1955; amd. Sec. 3, Ch. 227, L. 1957; amd. Sec. 186, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the end of the first sentence.

84-4946. Quarterly payment by employer—exception. On or before the last day of the months of April, July, October and January of each calendar year, beginning with the month of October, 1955, every employer subject to the provisions of sections 84-4943 and 84-4945 shall file a return in such form and containing such information as may be required by the department, and shall pay therewith the amount required by section 84-4943 to be deducted and withheld by said employer from wages paid during the preceding quarterly period of three (3) months, beginning with wages paid from and after July 1, 1955.

If the total amount of the tax withheld by an employer under the provisions of this act upon the wages of all employees of any employer is less than ten dollars ($10) in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments as provided in the preceding paragraph, but in lieu thereof such employer shall, on or before February fifteenth of the year succeeding that in which such wages were paid, file an annual return in such form as may be required by the department, and shall pay therewith the amount required to be deducted and withheld by the said employer from all wages paid during the preceding calendar year.

Provided, however, that if the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under section 84-4928.1 with respect to jeopardy assessments of income tax.

History: En. Sec. 5, Ch. 246, L. 1955; amd. Sec. 1, Ch. 212, L. 1967; amd. Sec. 187, Ch. 516, L. 1973.

Amendments

The 1967 amendment, in the first paragraph, substituted "sections 84-4943 and 84-4945" for "this act" after "provisions of"; substituted "as may be required by" for "as shall be determined by" after "such information"; and substituted "section 84-4943" for "this act" after "the amount required by"; and, in the second paragraph, substituted "If the" for "Provided, however, that when the aggregate" before "total amount of the tax"; inserted "by an employer" after "withheld"; substituted "as provided in the preceding paragraph" for "last hereinabove provided for" after "quarterly payments"; deleted "next" before "succeeding"; substituted "as may be required by" for "as shall be determined by" after "in such form"; deleted "by this act" after "the amount required"; added the last paragraph; and made minor changes in phraseology.

The 1973 amendment substituted "department" for "board" in three places.

84-4947. Amount withheld considered as tax collected.

Indians—Withholding Tax

Montana income tax erroneously withheld from wages of an Indian employed by the federal government on a reservation may only be recovered by filing a claim for refund with the state taxing authority, since the employer is not liable under Montana law. Clincher v. United States, States of Montana and Arizona, 499 F 2d 1250.

84-4948. Annual withholding statement. Every employer shall, prior to the fifteenth day of February in each year furnish to each employee a written statement showing the total wages paid by the employer to the employee during the preceding calendar year and showing the amount of the federal income tax deducted and withheld from such wages and the amount of the tax deducted and withheld therefrom under the provisions of this act. Said statement shall contain such additional information and shall be in such form as the department shall prescribe, and a duplicate thereof shall be filed by the employee with his state income tax return.

History: En. Sec. 7, Ch. 246, L. 1955; amd. Sec. 188, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the end of the section.

84-4950. Filing of annual statement by employer—duty. Every employer shall, on or before the fifteenth day of February in each year file with the department a statement in such form and summarizing such information as the department shall require, including the total wages paid to each employee during the preceding calendar year or any part thereof, and showing the total amount of the federal income tax deducted and withheld from such wages and the total amount of the tax deducted and withheld therefrom under the provisions of this act. Said annual statement filed by an employer shall, with respect to the wage payments reported therein, constitute full compliance with the requirements of section 84-4913, relating to the duties of information agents, and no additional information return shall be required with respect to such wage payments.

History: En. Sec. 9, Ch. 246, L. 1955; amd. Sec. 189, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

84-4951. Amounts withheld, held in trust for state—warrants to collect. Every employer who deducts and withholds any amounts under the provisions of this act shall hold the same in trust for the state of Montana, and if any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the department shall issue a warrant under its official seal which shall have the same force and effect and shall be enforced and carried into execution in the same manner as that specified in section 84-4928, with respect to warrants relating to unpaid income taxes.

History: En. Sec. 10, Ch. 246, L. 1955; amd. Sec. 190, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board."

84-4955. Rules and regulations—remedies for administration, enforcement and collection. The department is hereby empowered to adopt rules and regulations for the carrying out of the provisions of this act and the enforcement thereof. All of the remedies available to the state of Montana for the administration, enforcement and collection of income

taxes shall be available and shall apply to the tax required to be deducted and withheld under the provisions of this act.

History: En. Sec. 14, Ch. 246, L. 1955; amd. Sec. 191, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the beginning of the section.

84-4956. Credits and refunds. If the department of revenue discovers from the examination of a return, or upon claim duly filed by a taxpayer, or upon final judgment of a court, that the amount of income tax is in excess of the amount due, or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment shall be credited against any income tax, penalty or interest, then due from the taxpayer, and the balance of such excess shall be refunded to the taxpayer.

Effective with taxable years ending on or after December 31, 1959, no such credit or refund shall be allowed or made after five (5) years from the date prescribed by statute for filing the return, unless before the expiration of such period a claim therefor is filed by the taxpayer, or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. Within six (6) months after a claim for refund is filed the state department of revenue shall examine said claim and either approve or disapprove it. If said claim is approved, the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state department of revenue shall so notify the said taxpayer and shall grant a hearing thereon upon proper application by the taxpayer. If the department disapproves a claim for refund, review of the determination of the department may be had as otherwise provided in this chapter.

Except as hereinafter provided for, effective with taxable years ending on or after December 31, 1962, interest shall be allowed on overpayments at the rate of six per cent (6%) per annum from the due date of the return or from the date of the overpayment (whichever date is later) to the date the department of revenue approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment shall be deemed to be the date on which the return for the taxable year was due. No interest shall accrue on an overpayment if the taxpayer elects to have it applied to his estimated tax for the succeeding taxable year; nor shall interest accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state department of revenue for the purpose of verifying the amount of the overpayment. No interest shall be allowed (a) if the overpayment is refunded within six (6) months from the date the return is due or the date the return is filed, whichever date is later; or (b) if the overpayment results from the carryback of a net operating loss; or (c) if the amount of interest is less than one dollar ($1.00). An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability, or one reasonably assumed to be imposed by this law,

shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 138, L. 1957; amd. Sec. 3, Ch. 199, L. 1963; amd. Sec. 192, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section.

84-4958. Release of lien or partial discharge of property. (1) The department of revenue shall issue a certificate of release of any lien imposed with respect to any tax due under this chapter, when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof, has been fully satisfied. The department of revenue may issue a certificate of release if it determines that the lien is unenforceable.

(2) The department of revenue may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under this chapter, if:

(a). * * * [Same as parent volume.]

(b) There is paid to the state treasurer in part satisfaction of the liability secured by the lien, an amount which shall not be less than the value, as determined by the department of revenue, of the interest of the state of Montana in the part to be discharged; or

(c) The department of revenue determines at any time that the interest of the state of Montana in the part to be so discharged has no value.

History: En. Sec. 1, Ch. 130, L. 1965; amd. Sec. 193, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in five places.

84-4959. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any person relating to the liability of such person in respect to the tax imposed by this chapter for any taxable period.

(2) Any such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded.

History: En. 84-4959 by Sec. 2, Ch. 353, L. 1977.

84-4960. Purpose and definition. (1) The purpose of 84-4960 and 84-4961 is to allow individuals and small businesses that meet the definition established in this section to take one-fifth investment credit allowed against federal taxes and thus to stimulate capital investment by the small business sector.

(2) For the purposes of 84-4960 and 84-4961, "small business" means a business that is eligible to elect to be taxed under the provisions of 84-1501.2, whether or not such election is made.

History: En. 84-4960 by Sec. 1, Ch. 412, L. 1977.

Title of Act

An act to allow an investment credit against individual income tax and corporation license tax; providing an effective date.

84-4961. Investment credit. There is allowed, as a credit against the taxes imposed by 84-4902, 84-4902.1, and 84-1501 a percentage of the investment in certain depreciable property equal to one-fifth the percentage of investment in such property allowed under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended.

History: En. 84-4961 by Sec. 2, Ch. 412, L. 1977.

Application Date

Section 3 of Ch. 412, Laws 1977 read "This act applies to all taxable years beginning after December 31, 1976. A credit may not be carried back to any taxable year commencing in 1976 or earlier."

CHAPTER 51—INSURANCE COMPANIES GENERAL PROPERTY TAX

Section
84-5103. Taxation of credits of insurance companies—other property.

84-5101. (2111) Assessment and taxation of insurance companies.

Cross-References

Multistate tax compact, sec. 84-6701.

84-5103. (2112.1) Taxation of credits of insurance companies—other property. All property other than credits of insurance companies requir d by law to have and maintain a legal reserve for the protection of policyholders shall be assessed, classified, and taxed as other property of like character. Credits, including evidence of indebtedness secured by mortgages, less legal reserves for the protection of policyholders and other indebtedness, shall be classified and taxed on the basis of 30% of market value as thus ascertained.

History: En. Sec. 1, Ch. 63, L. 1929; amd. Sec. 59, Ch. 566, L. 1977.

Amendments

The 1977 amendment substituted "market value" near the end of the section for "full cash value"; and made minor changes in punctuation and style.

CHAPTER 52—LIVESTOCK TAXATION

Section
84-5201.1. Duty of owner to assist in assessment.
84-5201.2. Short title.
84-5201.3. Definition.
84-5201.4. Computation of estimated value of livestock.
84-5201.5. Taxpayer not owning livestock on assessment day.
84-5201.6. Procedure for correcting assessed value and receiving refunds for overpayments.
84-5208. Penalty for violation of law.
84-5210. State department of revenue to prescribe levy.

84-5211. Limitation of levies—livestock moneys.
84-5212. Use of moneys arising from taxes prescribed in preceding section.
84-5214. Levy for bounty moneys—use of proceeds.
84-5215. Bounties, when paid.
84-5216. Tax levy for bounties on predatory animals.
84-5222. Assessment of swine.

84-5201.1. Duty of owner to assist in assessment. The owner of livestock as defined in 84-5201.3, or his agent, at the time of assessment shall make and deliver to the state department of revenue or its agent in the county or counties where his livestock were located since the last assessment date a written statement, under oath, showing the different kinds of his livestock within the county or counties belonging to him or under his charge, with their marks and brands and showing the times during that period that his livestock were within the county or counties.

History: En. 84-5201.1 by Sec. 4, Ch. 507, L. 1975; amd. Sec. 6, Ch. 260, L. 1977.

Amendments

The 1977 amendment substituted "84-5201.3" near the beginning of the section for "section 84-406 (3)."

84-5201.2. Short title. This act may be cited as the "Livestock Tax Reform Act of 1975."

History: En. Sec. 1, Ch. 507, L. 1975.

Title of Act

An act to revise the property tax laws affecting livestock, amending sections 84-406, 84-202, and 84-5208, R. C. M. 1947, and repealing sections 84-5202 through 84-5207, R. C. M. 1947.

84-5201.3. Definition. "Livestock" means cattle, sheep, horses, and mules.

History: En. 84-5201.3 by Sec. 1, Ch. 260, L. 1977.

Title of Act

An act revising the laws relating to the assessment of livestock; amending sections 84-406, 84-5201.1, 84-6010, 84-6011, 84-6013, and 84-6014, R. C. M. 1947.

84-5201.4. Computation of estimated value of livestock. (1) The estimated value of livestock in a county on assessment day is computed by adding the assessed value of all livestock more than 9 months of age owned by the taxpayer in the county on the last day of each month since the last assessment day and dividing the sum by 12.

(2) On the last day of the year in which the estimate is made, the taxpayer must file a current statement setting forth the number of all livestock more than 9 months of age owned by him in each county on the last day of each month during the current tax year.

(3) The taxpayer is entitled to an adjustment of the estimated assessed value of livestock and recomputation of any tax levied and a refund of taxes paid if the amount paid is higher than the estimate.

(4) All remedies available to the taxpayer who owned livestock are available to him notwithstanding the fact that an estimated assessed value of livestock is submitted on or after the tax assessment day, subject to the end of the year adjustment.

History: En. 84-5201.4 by Sec. 2, Ch. 260, L. 1977.

84-5201.5. Taxpayer not owning livestock on assessment day. (1) If a taxpayer does not own livestock on assessment day but owned livestock during the preceding tax year, he is not subject to taxes for the current tax year if he files a statement with the appropriate county assessor stating that he does not intend to own or acquire livestock during the tax year.

(2) If the taxpayer does acquire livestock during the year, he must file a current statement on the last day of the year and be subject to the provisions of 84-5201.4.

History: En. 84-5201.5 by Sec. 3, Ch. 260, L. 1977.

84-5201.6. Procedure for correcting assessed value and receiving refunds for overpayments. (1) If the taxpayer owning livestock has filed an estimate pursuant to 84-5201.4(1) and a current statement pursuant to 84-5201.4(2) which shows that the number of livestock actually owned differs from the estimated number of livestock, the county assessor must, within 30 days, correct the assessed value of the livestock or provide the taxpayer with a written statement setting forth his reasons for not making the correction.

(2) If the taxpayer has already paid the tax levied or any portion, the county treasurer must, within 30 days, make a refund to the taxpayer of that portion of the tax improperly levied or provide the taxpayer with a written statement setting forth his reasons for not making the refund.

(3) Within 60 days of receipt of the written statement from the county assessor, the taxpayer may commence a lawsuit to correct the assessment or recover the tax paid in a court of competent jurisdiction against the county treasurer, the county or municipality on whose behalf the tax was levied or collected, or the state department of revenue which must be served with summons and a copy of the complaint.

(4) When a tax is paid in installments, the first installment, or a portion, may be the basis of the lawsuit, and if any subsequent installment becomes due before the lawsuit is finally determined, the subsequent installment, or portion, may be paid under protest and incorporated into the pending lawsuit with all rights, duties, and obligations determined by the result of the lawsuit.

(5) Payments and disposition of taxes paid under protest are governed by the provisions of 84-4502.

History: En. 84-5201.6 by Sec. 4, Ch. 260, L. 1977.

84-5202 to 84-5207. (2069 to 2074) **Repealed.**

Repeal

Sections 84-5202 to 84-5207 (Secs. 1 to 6, Ch. 125, L. 1909; Sec. 1, Ch. 177, L. 1921; Sec. 1, Ch. 52, L. 1945; Secs. 104 to 107, Ch. 405, L. 1973), relating to livestock taxation, were repealed by Sec. 6, Ch. 507, Laws of 1975.

84-5208. (2075) **Penalty for violation of law.** Any person or persons, company, or corporation, who is the owner or has in charge any livestock within this state, who refuses to make the statement or statements as pro-

vided in section 84-5202.1, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars.

History: En. Sec. 7, Ch. 125, L. 1909; re-en. Sec. 2075, R. C. M. 1921; amd. Sec. 5, Ch. 507, L. 1975.

Amendments

The 1975 amendment substituted "section 84-5202.1" for "section 84-5202."

Repealing Clause

Section 6 of Ch. 507, Laws 1975 read "Sections 84-5202 through 84-5207 are repealed."

84-5210. (2077) **State department of revenue to prescribe levy.** The state department of revenue is hereby empowered and it is made its duty, annually, to prescribe the levy to be made against livestock of all classes for the purpose above indicated, and the various boards herein named shall have the right to recommend to said state department of revenue the amount of such levy.

History: En. Sec. 2, Ch. 127, L. 1915; re-en. Sec. 2077, R. C. M. 1921; amd. Sec. 194, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

84-5211. (2078) **Limitation of levies—livestock moneys.** (1) The amount of the levy may not in any event exceed 10 mills upon the taxable value of sheep and 15 mills upon the taxable value of other livestock. The levy is raised to aid in the payment of the general expenses of the brands-enforcement functions of the department of livestock, including salaries, office, detective, prosecution, travel, and all incidental expenses.

(2) A separate levy not to exceed 15 mills on all livestock may be raised for the use of the animal health functions of the department of livestock and placed in an earmarked revenue fund for the payment of indemnity for animals slaughtered, for salaries and expenses incurred in investigating, controlling, and suppressing diseases, including expenses of quarantine and salaries and expenses incurred for such purposes, and for laboratory maintenance. At the written request of the department of livestock the state treasurer and state controller shall set aside in a separate account in the earmarked revenue fund any moneys as may be available and requested. The moneys may be expended only when the department of livestock determines that a livestock disease emergency exists requiring its expenditure for such purposes as the department of livestock may order and direct.

(3) A separate levy of not to exceed 5 mills on the taxable value of all livestock, [may be raised] to be used at the discretion of the department of livestock for any or all of the purposes set forth in subsections (1) and (2) of this section or 46-1903.

History: En. Sec. 3, Ch. 127, L. 1915; re-en. Sec. 2078, R. C. M. 1921; amd. Sec. 1, Ch. 152, L. 1929; amd. Sec. 109, Ch. 147, L. 1963; amd. Sec. 1, Ch. 422, L. 1975; amd. Sec. 1, Ch. 120, L. 1977; amd. Sec. 60, Ch. 566, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 120 and once by Ch. 566. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Instructions to Code Commissioner and Publisher

Section 61, Ch. 566, Laws of 1977 read "In preparing a composite section of section 84-5211, as amended by this act and

by Chapter 120, Laws of 1977, the code commissioner and the publisher of the Revised Codes of Montana, 1947, shall indicate the authority granted by Chapter 120 as authority to levy an additional 5 mills on the taxable value of all livestock."

Amendments

The 1975 amendment increased the maximum mill levies from one to three for sheep, and from one and a half to three for other livestock and for use of the department's animal health functions; substituted "department of livestock" for "livestock commission of Montana" in the first part of the section and for "livestock sanitary board" throughout the remainder of the section; inserted "brands-enforcement functions of the" and "animal health functions of the" before the first and second references to the department of livestock, respectively; and made minor changes in style.

Chapter 120, Laws of 1977, inserted subdivision designations (1) and (2); added subdivision (3); and made minor changes in phraseology, punctuation and style.

Chapter 566, Laws of 1977, increased the limitation on levies in subdivision (1) from 2 mills to 10 mills on sheep and from 3 mills to 15 mills on other livestock; substituted "taxable value" in two places in subdivision (1) for "assessed valuation"; increased the limitation on the separate levy in subdivision (2) from 3 mills to 15 mills; and made minor changes in phraseology, punctuation and style.

84-5212. (2079) **Use of moneys arising from taxes prescribed in preceding section.** The money received from the tax levied on sheep, as provided in 84-5211(1), shall be placed to the credit of the earmarked revenue fund, and shall be used to aid in the payment of the general expenses, salaries, office expense, detective expense, expenses of prosecution, travel, and other expense of the brands-enforcement functions of the department of livestock, and the moneys received from the tax on all other stock, as provided in the preceding section, shall be placed to the credit of the earmarked revenue fund, to be used for like purposes by the department of livestock. The moneys received from the tax levied by 84-5211(2) shall be placed in the earmarked revenue fund, to be used for the animal health functions of the department of livestock for the payment of indemnity for animals slaughtered and for the payment of expenses in investigating and suppressing diseases, including quarantine and all expenses connected therewith. The moneys received from the tax levied by 84-5211(3) shall be placed in the earmarked revenue fund to be used at the discretion of the department for payment of expenses incurred in the discharge of its animal health, brands-enforcement, or predatory animal control functions.

History: En. Sec. 4, Ch. 127, L. 1915; re-en. Sec. 2079, R. C. M. 1921; amd. Sec. 89, Ch. 147, L. 1963; amd. Sec. 2, Ch. 422, L. 1975; amd. Sec. 2, Ch. 120, L. 1977.

Amendments

The 1975 amendment inserted "the brands-enforcement functions" near the middle of the first sentence; substituted "department of livestock" for references to the livestock commission and the livestock sanitary board throughout the section; and made minor changes in phraseology.

The 1977 amendment substituted "84-5211 (1)" for "the first part of the preceding section" in the first sentence; substituted "84-5211 (2)" for "the second division of the preceding section" in the second sentence; and added the last sentence.

Cross-References

Livestock commission renamed and continued in department of livestock, sec. 82A-1303.

84-5214. (2081) **Levy for bounty moneys—use of proceeds.** The department of revenue shall annually levy an ad valorem tax on all livestock in the state of Montana for the purpose of protecting them against destruction, depredation, and injury by wild animals, whether the livestock is on lands in private ownership, in the ownership of the state, or in the

ownership of the United States, including open ranges and all lands in or of the public domain. This protection may be by any means of effective predatory animal destruction, extermination, and control, including systematic hunting and trapping and payment of bounties. The tax levy may not exceed in any one year 7.5 mills on the taxable value of all sheep and 5 mills on the taxable value of other livestock. The moneys received from the tax levies shall be transmitted monthly with other taxes for state purposes by the county treasurer of each county to the state treasury. The state treasurer shall place the money in an earmarked revenue fund with the other moneys as provided in 46-1901. The moneys shall thereafter he paid out only on claims duly and regularly presented to the department of livestock and approved by the department in accordance with the law applicable either to claims for bounties or for other expenditures necessary and proper for predatory animal control by means and methods other than payment of bounties, as determined by the department of livestock. All the moneys shall be available for the payment of bounty claims and for expenditures for planned, seasonal, or other campaigns directed or operated by the department in co-operation with other agencies for the systematic destruction, extermination, and control of predatory wild animals, as determined by the department and its advisory committee. No claims may be approved in excess of moneys available for such purposes, and no warrants may be registered against the moneys.

History: En. Sec. 6, Ch. 127, L. 1915; re-en. Sec. 2081, R. C. M. 1921; amd. Sec. 4, Ch. 73, L. 1923; amd. Sec. 2, Ch. 152, L. 1929; amd. Sec. 1, Ch. 111, L. 1947; amd. Sec. 103, Ch. 147, L. 1963; amd. Sec. 54, Ch. 100, L. 1973; amd. Sec. 108, Ch. 405, L. 1973; amd. Sec. 3, Ch. 422, L. 1975; amd. Sec. 62, Ch. 566, L. 1977.

Amendments

Chapter 100, Laws of 1973 deleted "under the authority of section 9, article XII of the constitution of Montana, and hereby, annually prescribe" before "make and levy an ad valorem tax" in the first sentence.

Chapter 405, Laws of 1973, substituted "department of revenue" for "state board of equalization" at the beginning of the first sentence; and made the same deletion as did Ch. 100, except that Ch. 405 did not delete "annually prescribe."

The 1975 amendment substituted "department of livestock" or "department" for "Montana livestock commission" or "commission" throughout the section.

The 1977 amendment increased the levies in the third sentence from 1.5 mills on sheep to 7.5 mills and from 1 mill on other livestock to 5 mills; substituted "taxable value" two places in the third sentence for "assessed valuation"; and made minor changes in phraseology, punctuation and style.

84-5215. (2081.1) **Bounties, when paid.** The department of livestock may pay a bounty for the destruction of wild animals at those times of the year they consider advisable.

History: En. Sec. 4½, Ch. 73, L. 1923; amd. Sec. 4, Ch. 422, L. 1975.

Amendments

The 1975 amendment substituted "department of livestock" for "livestock commission"; and made minor changes in phraseology.

84-5216. (2082) **Tax levy for bounties on predatory animals.** Whenever the owners, agent, or agents of the owners representing 51% of the livestock of any county in this state present a petition to the board of county commissioners of such county asking for the levy of a tax upon the livestock of the county for the purpose of paying bounties on predatory

animals killed in the county, it is the duty of the board of county commissioners to make the levy, which may not exceed 50 mills on the dollar of the taxable value of all livestock in the county. The tax shall be assessed and collected in the same manner as all other state and county taxes.

History: En. Sec. 1, Ch. 180, L. 1921; re-en. Sec. 2032, R. C. M. 1921; amd. Sec. 63, Ch. 566, L. 1977.

Amendments

The 1977 amendment increased the limitation on the levy from 10 mills to 50 mills; substituted "taxable value" for "assessed valuation"; and made minor changes in phraseology, punctuation and style.

84-5222. Assessment of swine. (1) Each swine producer shall submit a statement in the manner prescribed by the department of revenue showing the number of pigs owned in each of the following classes as of January 1:

(a) market hogs, which are hogs between 3 months and 6 months of age, and which have a conclusively presumed weight factor of 150 pounds;

(b) breeding sows, which have a conclusively presumed weight factor of 300 pounds;

(c) breeding boars, which have a conclusively presumed weight factor of 300 pounds.

(2) The department shall determine market value of swine by multiplying the following average USDA Omaha quotation price over the preceding 5 years, less $2 per hundred in the case of market hogs and breeding sows, times the conclusively presumed weight of each pig in the class:

(a) market hogs—USDA Omaha quotation for grades 1 to 3 at 200 to 240 pounds;

(b) breeding sows—USDA Omaha quotation for sows at 270 to 330 pounds;

(c) breeding boars—valued the same as market hogs.

(3) The department shall apply the same equalization factor to swine as to other classes of livestock.

(4) The department shall publish the most recent 5-year average USDA Omaha quotation price for each class in the Montana Administrative Code.

History: En. 84-5222 by Sec. 1, Ch. 393, L. 1977.

Title of Act

An act establishing the method of assessing swine after 1976; enacting a new R. C. M. section and amending section 84-202, R. C. M. 1947.

CHAPTER 54—MINES TAXATION—GENERAL PROPERTY AND NET PROCEEDS TAX

Section

84-5402. Net proceeds tax—statement of yield.
84-5403. Net proceeds—how computed.
84-5405. Lien of tax and penalty.
84-5406. Assessment of royalties.
84-5407. False or fraudulent reports, procedure in case of.
84-5409. Taxation and payment on royalty interests.
84-5412. Examination of records by department of revenue.
84-5413. Lien of tax—enforcement of payment.
84-5415. Dissolved corporations to make returns on net proceeds of mines and pay tax accrued.

84-5401. (2088) **Taxation of mines.**

Cross-References

Multistate tax compact, sec. 84-6701.

Net Proceeds

The net proceeds tax does not apply to talc once it is past the beneficiation stage; value of mining product to be taxed is determined after initial processing of raw talc and the value should not include manufacturing processes which further refine talc for use in sophisticated products. Pfizer, Inc. v. Madison County, — M —, 505 P 2d 399.

84-5402. (2089) **Net proceeds tax—statement of yield.** Every person engaged in mining, extracting, or producing from any quartz vein or lode, placer claim, dump, or tailings or other place or sources whatever precious stones or gems, vermiculite, bentonite, or other valuable mineral, except coal and metals, must on or before March 31 each year make out a statement of the gross yield and value of the above-named metals or minerals from each mine owned or worked by such person, during the year preceding January 1 of the year in which such statement is made. Such statement shall be in the form prescribed by the department of revenue and must be verified by the oath of the person completing the statement or the manager, superintendent, agent, president, or vice-president if a corporation, association, or partnership and must be delivered to the department of revenue on or before March 31. Such statement shall show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of ore, barrels of petroleum, cubic feet of natural gas, or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of such ores, mineral products, or deposits and the yield of such ores, mineral products, or deposits from such mine in constituents of commercial value; that is, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas, or other commercially valuable constituents of the ores, mineral products or deposits, measured by standard units of measurement, yielded to such person, so engaged in mining and to each royalty holder, if any, during the period covered by the statement;

(5) the gross yield or value in dollars and cents;

(6) cost of extracting from the mine;

(7) cost of transporting to place of reduction or sale;

(8) cost of reduction or sale;

(9) cost of marketing the product and conversion of same into money;

(10) cost of construction, repairs, and betterments of mines, and cost of repairs and replacements of reduction works;

(11) the assessed valuation of reduction works for the calendar year for which such return is made;

(12) cost of fire insurance and workers' compensation insurance.

History: En. Sec. 1, Ch. 237, L. 1921; re-en. Sec. 2089, R. C. M. 1921; amd. Sec. 1, Ch. 191, L. 1925; amd. Sec. 1, Ch. 139, L. 1927; amd. Sec. 1, Ch. 161, L. 1933; amd. Sec. 1, Ch. 188, L. 1935; amd. Sec. 1, Ch. 95, L. 1947; amd. Sec. 1, Ch. 138, L. 1969; amd. Sec. 195, Ch. 516, L. 1973; amd. Sec. 16, Ch. 525, L. 1975; amd. Sec. 18, Ch. 52, L. 1977; amd. Sec. 14, Ch. 98, L. 1977; amd. Sec. 4, Ch. 498, L. 1977.

Compiler's Notes

This section was amended three times in 1977 by Chs. 52, 98, and 498. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

The 1969 amendment added the last two paragraphs.

The 1973 amendment substituted "department of revenue" for "board of equalization" in the preliminary clause and the final two paragraphs.

The 1975 amendment in the first sentence deleted "coal" after "copper"; inserted "except coal" in the first sentence; and deleted "tons of coal" before "barrels of petroleum" in subdivision 4.

Chapter 52, Laws of 1977, deleted "partnership, corporation, or association" after "person" near the beginning of the section; deleted references to corporations or associations throughout the section after references to persons; substituted "workers' compensation" in subdivision (12) for "workmen's compensation"; and made minor changes in phraseology, punctuation and style.

Chapter 98, Laws of 1977, deleted "petroleum, natural gas" before "or other valuable mineral" in the first sentence; inserted "completing the statement" in the second sentence; substituted "workers' compensation" in subdivision (12) for "workmen's compensation"; deleted the last two paragraphs which provided penalties for failure to file statements and extensions of time for filing statements; and made minor changes in phraseology, punctuation and style.

Chapter 498, Laws of 1977, substituted "vermiculite, bentonite, petroleum, natural gas, or other valuable mineral, except coal and metals" in the first sentence for "gold, silver, copper, lead, petroleum, natural gas, or other valuable mineral, except coal"; deleted "the number of ounces of gold or silver, pounds of copper or lead" before "barrels of petroleum" in subdivision (4); and made minor changes in phraseology, punctuation and style.

Separability Clause

Section 17 of Ch. 525, Laws 1975 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

84-5403. (2090) **Net proceeds—how computed.** (1) The department shall calculate from the returns the gross product yielded from such mine and its gross value for the year covered by the statement and shall calculate and compute the net proceeds of the mine yielded to the person, corporation, or association engaged in mining. Net proceeds shall be determined by subtracting from the value of the gross product thereof the following:

(a) all royalty paid or apportioned in cash or in kind by the person, corporation, or association so engaged in mining;

(b) all moneys expended for necessary labor, machinery, and supplies needed and used in the mining operations and developments;

(c) all moneys expended for improvements, repairs, and betterments necessary in and about the working of the mine, except as hereinafter provided;

(d) all moneys expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine;

(e) depreciation in the sum of 6% of the assessed valuation of such

milling and reduction works for the calendar year for which such return is made;

(f) all moneys actually expended for transporting the ores and mineral products or deposits from the mines to the mill or reduction works or to the place of sale and for extracting the metals and minerals therefrom and for marketing the product and the conversion of the same into money;

(g) all moneys expended for fire insurance and workers' compensation insurance and for payments by mine operators to welfare and retirement funds when provided for in wage contracts between mine operators and employees.

(2) In computing the deductions allowable for repairs, improvements, and betterments to the mine, the department shall allow 10% of such cost each year for a period of 10 years.

(3) No moneys invested in mines or improvements may be allowed as a deduction unless all machinery, equipment, and buildings represented by such moneys are returned to the county in which such mine is located for assessment purposes, at the level of assessment of all other property in such county.

(4) No moneys invested in the mines and improvements during any year, except the year for which statement is made and except as provided in this section, may be included in such expenditures; and such expenditures may not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the mine or superintending the management thereof.

History: En. Sec. 2, Ch. 237, L. 1921; re-en. Sec. 2090, R. C. M. 1921; amd. Sec. 2, Ch. 191, L. 1925; amd. Sec. 2, Ch. 139, L. 1927; amd. Sec. 2, Ch. 161, L. 1933; amd. Sec. 2, Ch. 188, L. 1935; amd. Sec. 1, Ch. 57, L. 1951; amd. Sec. 1, Ch. 257, L. 1959; amd. Sec. 109, Ch. 405, L. 1973; amd. Sec. 15, Ch. 98, L. 1977.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization at the beginning of the first paragraph and in the paragraph following subdivision 7; and deleted "the county assessor of" before "the county in which such mine is located" in the second paragraph following subdivision 7.

The 1977 amendment inserted the subsection designations; redesignated former subdivisions 1 through 7 as subdivisions (1)(a) through (1)(g); deleted "in dollars and cents" in three places in subsection (1) after references to value and net proceeds; substituted "worker's compensation" in subdivision (1)(g) for "workmen's compensation"; and made minor changes in phraseology, punctuation and style.

84-5405. (2090.2) **Lien of tax and penalty.** The tax and penalty so assessed on net proceeds are a lien upon all of the right, title, and interest of such operator in or to such mine or mining claim and upon all of the right, title, and interest in or to the machinery, buildings, tools, and equipment used in operating the mine or mining claim. The tax and penalty on such net proceeds may be collected and the payment enforced by the seizure and sale of the personal property upon which the tax and penalty are a lien in the same manner as other personal property is seized and sold for delinquent taxes or by the sale of the mine and improvements, as provided for the sale of real property for delinquent taxes or by the institution of a civil action for its collection in any court of competent jurisdiction. Resort to any one of the methods of enforcing collection shall not bar the right to

resort to either or both of the other methods, but any two or all of the methods may be used until the full amount of such tax and penalty is collected.

History: En. Sec. 4, Ch. 161, L. 1933; amd. Sec. 2, Ch. 138, L. 1969; amd. Sec. 16, Ch. 98, L. 1977.

Amendments

The 1969 amendment inserted "and/or penalty" after "The tax" at the beginning of the section; and added "and the tax and/or penalty * * * such tax and/or penalty is collected."

The 1977 amendment substituted "tax and penalty" for "tax and/or penalty" throughout the section; and made minor changes in phraseology, punctuation and style.

84-5406. (2090.3) **Assessment of royalties.** Upon receipt of the list or schedule setting forth the names and addresses of any and all persons, corporations, and associations owning or claiming royalty and the amount paid or yielded as royalty to the royalty owners or claimants during the year for which the return is made, the department of revenue shall proceed to assess and tax the royalties on the same basis as net proceeds of mines are taxed as provided by 84-301.3.

History: En. Sec. 3, Ch. 188, L. 1935; amd. Sec. 196, Ch. 516, L. 1973; amd. Sec. 64, Ch. 566, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the middle of the section.

The 1977 amendment substituted "assess and tax the royalties" for "the assessment of all such royalties, and shall assess the same at the full cash value of the money or product yielded during such preceding calendar year, and the same shall be taxed"; substituted "84-301.3" at the end of the section for "84-301"; and made minor changes in phraseology and punctuation.

84-5407. (2090.4) **False or fraudulent reports, procedure in case of.** If any report required by this chapter contains any willfully false or fraudulent statements as to the gross amount received by any person, corporation, or association engaged in mining for any mine's product, then the department shall compute the gross value of such mine's product based upon the average quotations of the price of such mine's product in New York City or the relative market value at the point of delivery as evidenced by some established authority or market report. If any such person, corporation, or association has sold or otherwise disposed of any of its mine's product at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the department shall compute the gross value of such portion of the mine's product so sold or disposed of substantially below the market price, which gross value shall be based upon the quotations of the price of such mine's product in New York City or the relative market value at the point of delivery at the time such portion of the product was so sold or otherwise disposed of, as evidenced by some established authority or market report. Should there be no quotation covering any particular product, then the department shall fix the value of such gross product or such portion thereof as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 4, Ch. 188, L. 1935; amd. Sec. 197, Ch. 516, L. 1973; amd. Sec. 17, Ch. 98, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

The 1977 amendment deleted "such as the Engineering and Mining Journal of New York City, or some other standard publication, giving the market reports for the year covered by the statement" from the end of the first and second sentences; and made minor changes in phraseology and punctuation.

84-5408. (2091) **Repealed.**

Repeal

Section 84-5408 (Sec. 3, Ch. 237, L. 1921; Sec. 5, Ch. 188, L. 1935; Sec. 1, Ch. 67, L. 1945; Sec. 1, Ch. 181, L. 1959; Sec. 198, Ch. 516, L. 1973), relating to the transmission of tax proceeds to county assessors, was repealed by Sec. 22, Ch. 98, Laws 1977.

84-5409. (2091.1) **Taxation and payment on royalty interests.** At the time of transmitting net proceeds assessments the state department of revenue shall also transmit the royalty lists or schedules to the county assessor of each county in which such mines and mining claims are located and thereupon the county assessor shall prepare from such net proceeds and royalty assessments a tax roll which shall be by him furnished to the county treasurer on or before the fifteenth day of September following, as specified in this section. Said taxes shall be due and payable. Assessments of royalty on production of metals, and minerals other than petroleum and natural gas, shall be entered by the county assessor in the personal property assessment book in the name of the recipient or owner of such royalty. The county treasurer shall proceed to give full notice thereof to such recipient or royalty owner, and to collect the taxes thereon in the same manner as taxes on net proceeds of mines. Taxes on such royalty assessments, and taxes on net proceeds of mines shall be payable at the times specified in section 84-4103, and any delinquencies in the payment of same shall be subject to the interest and penalties provided in section 84-4103.

History: En. Sec. 6, Ch. 188, L. 1935; amd. Sec. 1, Ch. 162, L. 1939; amd. Sec. 2, Ch. 257, L. 1959; amd. Sec. 199, Ch. 516, L. 1973; amd. Sec. 1, Ch. 398, L. 1975.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the first sentence.

The 1975 amendment substituted "as specified in this section" at the end of the first sentence for "upon which date"; added the last sentence; and made a minor change in punctuation.

84-5410. (2092) **Repealed.**

Repeal

Section 84-5410 (Sec. 4, Ch. 237, L. 1921; Sec. 200, Ch. 516, L. 1973; Sec. 19, Ch. 52, L. 1977), relating to penalty for failure to make estimate and estimate of net proceeds, was repealed by Sec. 22, Ch. 98, Laws 1977.

84-5412. (2094) **Examination of records by department of revenue.** The state department of revenue shall have the right and power, at any time, to examine the records of any person, partnership, association, or corporation specified in this act, as the same may pertain to the yield of ore or mineral products or deposit, in order to verify the statements made by such person, partnership, association, or corporation, and if, from such examination, or from other information, said state department of revenue find any statement, or any material part thereof, willfully false or fraudulent, said state department of revenue must assess in the same manner as provided for in section 84-5403.

History: En. Sec. 6, Ch. 237, L. 1921; re-en. Sec. 2094, R. C. M. 1921; amd. Sec. 201, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-5413. (2095) **Lien of tax—enforcement of payment.** (1) The taxes on such net proceeds must be levied as the levy of other taxes is provided for, and every such tax is a lien upon the mine or mining claim from which the ore or mineral products or deposits are mined or extracted and is a prior lien upon all personal property and improvements used in the process of extracting such ore or mineral products or deposits, provided such personal or real property is owned by or under lease by the person who extracted said ore, mineral products, or deposits.

(2) The tax on such net proceeds may be collected and the payment thereof enforced by the seizure and sale of the personal property upon which the tax is a lien, in the same manner as other personal property is seized and sold for delinquent taxes, or by the sale of the mine or mining claim and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods, but any two or all of the methods herein provided for may be used until the full amount of such tax is collected.

History: En. Sec. 7, Ch. 237, L. 1921; re-en. Sec. 2095, R. C. M. 1921; amd. Sec. 1, Ch. 143, L. 1925; amd. Sec. 20, Ch. 52, L. 1977.

Amendments

The 1977 amendment inserted the subsection designations; deleted "partnership, association, or corporation" after "lease by the person" near the end of subsection (1); and made minor changes in phraseology and punctuation.

84-5415. Dissolved corporations to make returns on net proceeds of mines and pay tax accrued. Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by law to be made with reference to the net proceeds of mines, and pay the tax due for such period as it transacted business, on or before the date of such dissolution or cessation of business. The state department of revenue may grant a reasonable extension of time for filing a return upon good cause shown therefor.

History: En. Sec. 1, Ch. 10, L. 1941; amd. Sec. 202, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the final sentence.

CHAPTER 55—LIEU TAXES ON RESETTLEMENT PROJECTS—REQUESTS FOR UNITED STATES PAYMENT OF

Section
84-5501. Definitions.
84-5502. State department of revenue may make requests for sums in lieu of taxes from United States, when.

84-5501. Definitions. The following definitions shall be applied to the terms used in this act:

(1). * * * [Same as parent volume.]

(2) "Department" shall mean the state department of revenue of the state of Montana.

(3) to (6). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 58, L. 1939; amd. Sec. 203, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted subdivision (2) for a subdivision defining "board" as the state board of equalization.

84-5502. State department of revenue may make requests for sums in lieu of taxes from United States, when. The department of revenue is hereby authorized and empowered to make requests of the United States, for and on behalf of this state, for payment of such sums in lieu of taxes as the United States may agree to pay, and to consummate agreements with the United States, in the name of this state, for the performance of services by the state for the benefit of projects, and for the payment by the United States to the state, in one or more installments, of such sums in lieu of taxes.

History: En. Sec. 2, Ch. 58, L. 1939; amd. Sec. 204, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board" at the beginning of the section.

CHAPTER 56—CIGARETTE TAX—LICENSES—STAMPS

Section

84-5606. The tax.
84-5606.2. Definitions.
84-5606.3. Wholesaler's, sub-jobber's, retailer's, and cigarette vendor's licenses—multiple places of business—application forms.
84-5606.4. Vending machines not places of business per se—reports.
84-5606.5. Wholesaler's, sub-jobber's, retailer's, and cigarette vendor's license fees—renewal—display of license.
84-5606.6. Disposition of license fees—appropriations—transfer to general fund—justification of expenses.
84-5606.7. Affixing of insignia.
84-5606.8. Revocation or suspension of license—hearing and appeal—duration—sale of cigarettes after revocation or suspension a misdemeanor—forfeiture.
84-5606.9. Unlawful acts when license not current and valid—sales to licensed wholesalers, subjobbers, retailers and cigarette vendors only—misdemeanor—forfeiture.
84-5606.10. Tax imposed by section 84-5606.
84-5606.11. Only licensed wholesalers and retailers to affix insignia.
84-5606.12. Purchase of insignia at discount to defray costs—defrayment inapplicable to certain portion of tax.
84-5606.13. Use of tax meter machine authorized—insignia to be approved—marking of imported packages of cigarettes required—supervision of machines—charge—report.
84-5606.14. Resale of insignia prohibited—unused meter settings.
84-5606.15. Payment for insignia or affixation within thirty days—bond—new licensees to pay cash.
84-5606.16. Proceedings upon failure or refusal to pay tax—penalty.
84-5606.17. Tax meter users to keep certain records—examination of records.
84-5606.18. Sale and use of cigarettes a misdemeanor if insignia requirements not met.
84-5606.19. Place where violations committed deemed a nuisance.
84-5606.20. Shipments or deliveries into or out of state to be reported by carrier—form and contents of report.
84-5606.21. Transportation of cigarettes without insignia a misdemeanor unless in interstate commerce—vehicle, cigarettes and equipment subject to seizure and forfeiture.

84-5606.22. Inventory of seized property—application for return of property.
84-5606.23. Investigations, inquiries and hearings authorized—testimony under oath—subpoena powers—finding and order to be made and filed.
84-5606.24. Hearing or rehearing before state tax appeal board.
84-5606.25. Appeal to district court.
84-5606.26. Department's duties and powers—arrest, entry of complaint, and lawful search and seizure authorized.
84-5606.27. Promulgation of rules and regulations.
84-5606.28. County attorneys and peace officers to assist in enforcement of act—appointment of additional assistants and division authorized—presumption of violation.
84-5606.29. Department entitled to sue for unpaid tax and costs—treble damages.
84-5606.30. Employment of clerical and field assistants—disposition of taxes—war veterans' compensation fund abolished.
84-5606.31. Violation of act a misdemeanor unless otherwise provided—penalties.

84-5601 to 84-5605. Repealed.

Repeal

Sections 84-5601 to 84-5605 (Secs. 1 to 5, Ch. 289, L. 1947; Secs. 1, 2, Ch. 18, L. 1957), relating to licensing of cigarette dealers and distributors, were repealed by Sec. 32, Ch. 140, Laws 1969.

84-5606. The tax. (1) All taxes paid pursuant to the provisions of this section shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purpose of convenience and facility only. When the tax is paid by any other person such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Any person selling cigarettes at retail shall state or separately display in the licensed premises a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this subdivision shall in no way affect the method of collection of such tax as provided by this section.

(2) From and after the effective date of this amendatory law, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax which shall be paid prior to the time of sale and delivery thereof, to wit: Nine cents (9¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then nine cents (9¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package.

(3) From and after the effective date of this amendatory law there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivision (2) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to wit:

Two cents (2¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then two cents (2¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of all bonds of the state of Montana, and the payment of interest thereon, issued under the authority

of said Initiative No. 54 as amended, for the purpose of paying an honorarium to the residents of Montana who were in military service in the military forces of the United States in World War II, the Korean War, or World War I, and until the payment and retirement of all long-range building program bonds issued under the provisions of Title 79, chapter 22, of the Revised Codes of Montana, 1947.

(4) From and after the effective date of this amendatory act of the thirty-eighth legislative assembly of the state of Montana, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivisions (2) and (3) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to wit:

One cent (1¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then one cent (1¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of the additional bonds of the state of Montana authorized by amendatory acts of the thirty-fifth and thirty-eighth legislative assemblies, and the payment of the interest thereon and until the payment and retirement of all long-range building program bonds issued under the provisions of Title 79, chapter 22, of the Revised Codes of Montana, 1947.

(5) Within seventy-two (72) hours after receipt by the distributor or dealer of any such cigarettes, except as hereinafter provided, he shall cause to be securely affixed thereto, the required insignia denoting the tax thereon. Said insignia shall be properly canceled prior to sale or removal for consumption under such regulations as the board may prescribe. Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened. Every person who shall make, alter, forge or counterfeit any license stamp or insignia provided for in this law, or who shall assist or be concerned therein, or who shall have in his possession any altered, forged, counterfeit or spurious stamp, license or insignia, with intent to defraud the state, is guilty of forgery, and shall be punished by imprisonment in the state prison for not less than one (1) year or more than fourteen (14) years.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971.

Amendments

The 1967 amendment added "and until the payment * * * Revised Codes of Montana, 1947" at the end of the second paragraph of subdivision (3), and after "interest thereon" in the second paragraph of subdivision (4), substituted the same phrase for "and the payment of the expenses of administration of the amendatory act."

The 1971 amendment increased the tax specified in subsection (2) from five cents to nine cents per package and made minor changes in style.

Referendum Result

Section 1 of Ch. 318, Laws 1967, read: "It is determined that the electors of the state at the general election held in November, 1966, approved the levy and collection of the three-cent (3¢) per package cigarette tax authorized by section 84-5606, subdivisions (3) and (4), R. C. M.

1947, for the purpose of financing the cost of constructing and remodeling state buildings; this referendum measure having been presented at said election in the manner directed by chapter 264 of the Session Laws of the thirty-ninth legislative assembly, and having been approved by a majority of the electors voting on the question; and that it is now necessary to establish the procedure by which said referendum may be made effective."

INITIATIVE MEASURE NO. 54 AMENDMENTS

Section 9 of chapter 270 of the 1963 Session, which amended Initiative Measure No. 54 (Laws 1951, pp. 781 to 790) was amended by section 1 of chapter 112 of the 1967 Session. Section 1 of chapter 112 of the 1967 Session was amended by section 1 of chapter 236 of the 1969 Session; Section 9 of the act now reads:

Chapter 270, Laws 1963; amd. Chapter 112, Laws 1967; amd. Chapter 236, Laws 1969.

Section 9. Claims for benefits under the provisions of subdivision (1) of section 2, and/or under section 3 of said Initiative No. 54, as by this amendatory act amended, may be filed at any time before the expiration of five (5) years and six (6) months from and after the January first next following the date of the passage and approval of this act, provided, however, that said period of five (5) years and six (6) months shall be extended for a period equal to the period, or the aggregate of the periods, of the time during which the administration of this act shall be suspended, by reason of litigation or from any other cause.

[The remainder of Ch. 112, Laws 1967 read as follows:

"Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect upon its passage and approval." Approved February 21, 1967.]

Tax Not Applicable on Flathead Reservation

The cigarette excise tax imposed by the state of Montana is invalid with respect to the sale of cigarettes by a member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation when sale is made within the Flathead Reservation to Indians residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, — US —, 48 L Ed 2d 96, 96 S Ct 1634, affirming 392 F Supp 1297.

84-5606.2. Definitions. As used in this act the following definitions shall apply unless the context otherwise requires:

(a) The word "department" shall mean the state department of revenue of the state of Montana.

(b) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization or association however formed.

(c) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper, or any other substance or material except tobacco.

(d) The words "insignia" or "indicia" shall mean the impression or mark approved by the state department of revenue, under the provisions of this act.

(e) The words "full face value of insignia" shall mean the total amount of the tax levied under this act.

(f) The words "public warehouses" shall mean agents or representatives of manufacturers who receive cigarettes in carload lots for distribution to wholesaler and retailers in original cases.

(g) The word "wholesaler" shall mean and include any person resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from the manufacturers thereof and stores, sells, or otherwise disposes of the same after they shall reach

this state; and also any person who, within this state, manufactures or produces, directly or indirectly, cigarettes and sells or distributes the same within this state.

(h) The words "licensed wholesaler" shall mean a wholesaler duly licensed under the provisions of this act.

(i) The words "cigarette vendor" shall mean and include any person doing business in the state, who purchases cigarettes through a wholesaler, sub-jobber, or retailer for ten (10) or more cigarette vending machines, which he operates for a profit in premises or locations other than his own. Such person shall be treated as a wholesaler. Any person who operates less than ten (10) cigarette vending machines shall be treated as a retailer.

(j) The word "sub-jobber" shall mean and include any person who purchases cigarettes from a licensed wholesaler with the Montana cigarette tax insignia affixed thereto and sells or offers to sell such cigarettes to a licensed retailer or cigarette vendor. An isolated sale or exchange of cigarettes between licensed retailers shall not constitute such retailers as sub-jobbers. It is further provided that a sub-jobber shall use the license in the interest of the general public. If during any month, more than thirty-five per cent (35%) of volume of cigarette sales be with any retail client whose business is controlled directly or indirectly through sanguinity or affinity with the owner, or employer for such retail business, the license shall be deemed to have been used or to be intended to be used in violation of section 84-5606.8.

(k) The words "licensed sub-jobbers" shall mean a sub-jobber duly licensed under the provisions of this act, and they shall be treated as wholesalers.

(l) The word "retailer" shall mean any person other than a wholesaler, sub-jobber, or cigarette vendor, who is engaged in the business of selling cigarettes at retail.

(m) The words "licensed retailer" shall mean any person other than a wholesaler, sub-jobber, or cigarette vendor, who is duly licensed under the provisions of this act.

(n) The words "sale" and "sell" shall mean and include any transfer of cigarettes by sale, as defined by section 87A-2-106, R. C. M. 1947, or by gift, barter or exchange.

History: En. Sec. 1, Ch. 140, L. 1969; amd. Sec. 205, Ch. 516, L. 1973; amd. Sec. 1, Ch. 445, L. 1975.

Title of Act

An act repealing sections 84-5601, 84-5602, 84-5603, 84-5604, 84-5605, 84-5607, 84-5608, 84-5609, 84-5610, 84-5611, 84-5612, 84-5613, 84-5614, 84-5615, 84-5616, 84-5617, 84-5618, 84-5619, 84-5620, 84-5621, 84-5622, and 84-5623, R. C. M. 1947, and providing for annual license fees and for annual licensing of wholesalers and retailers of cigarettes, and for the payment of the costs of enforcement of state cigarette laws; and providing procedures for the collection of the tax imposed by section 84-5606, R. C. M. 1947; and providing for penalties for violations of this act, and providing for the administration of this act; and providing revenue for the general fund of the state of Montana.

Amendments

The 1973 amendment substituted subdivision (a) for a subdivision defining "board" as the state board of equalization; and substituted "department of revenue" for "board of equalization" in subdivision (d).

The 1975 amendment deleted "company or corporation" and "company, corporation or fraternal organization" after "person" throughout subdivision (i); inserted "sub-jobber, or retailer" in subdivision (i); inserted subdivisions (j) and (k); redesig-

nated former subdivisions (j) to (l) as subdivisions (l) to (n); and inserted "sub-jobber, or cigarette vendor" in subdivisions (l) and (m).

Cross-References

Multistate tax compact, sec. 84-6701.

84-5606.3. Wholesaler's, sub-jobber's, retailer's, and cigarette vendor's licenses—multiple places of business—application forms. Every wholesaler, sub-jobber, retailer, or cigarette vendor shall obtain a license from the department before engaging in the business of wholesaler, sub-jobber, or retailer, or cigarette vendor. A separate application and a separate license shall be required for each place of business owned, controlled or operated by such wholesaler, sub-jobber, retailer, or cigarette vendor within the state of Montana. Application forms shall require the type and general description of applicant organizations, names of all known owners, and such other pertinent information as the department may require in regularly promulgated regulations.

History: En. Sec. 2, Ch. 140, L. 1969; amd. Sec. 206, Ch. 516, L. 1973; amd. Sec. 2, Ch. 445, L. 1975.

Amendments

The 1973 amendment substituted "department" for "board" in the first sentence.

The 1975 amendment inserted references to sub-jobbers and cigarette vendors throughout the section; deleted "and home addresses" before "of all known owners" in the third sentence; deleted "state whether or not principals of such organization have been convicted of a felony and identify each such individual" after "of all known owners" in the third sentence; and substituted "department" for "board" near the end of the section.

Indian Dealer on Flathead Reservation

Cigarette dealer's license tax imposed by the state of Montana is invalid with respect to a member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation selling cigarettes on the reservation. Moe v. Confederated Salish and Kootenai Tribes, — US —, 48 L Ed 2d 96, 96 S Ct 1634, affirming 392 F Supp 1297.

84-5606.4. Vending machines not places of business per se—reports. Cigarette vending machines shall not be considered as places of business per se but a report of each and all machines shall be made on forms prescribed by the department, which shall state the name and address of the cigarette vendor, the assigned location of each machine with best machine identification available, type of business, and such other information as the board may require for proper administration of this act.

History: En. Sec. 3, Ch. 140, L. 1969; amd. Sec. 207, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the middle of the section.

84-5606.5. Wholesaler's, sub-jobber's, retailer's, and cigarette vendor's license fees—renewal—display of license. Each application for a wholesaler's license shall be accompanied by a fee of fifty dollars ($50) effective July 1, 1969. Each application for a sub-jobber's license shall be accompanied by a fee of fifty dollars ($50) effective July 1, 1975. Each application for a retailer's license shall be accompanied by a fee of five dollars ($5) effective July 1, 1969. These licenses shall be renewed annually upon payment of the annual fee in the amount set forth above, and shall be effective for one year, without proration, and are not transferable. Each license shall be prominently displayed on the licensed premises, and a separate license shall be displayed at each place of business owned, controlled

or operated by such wholesaler, sub-jobber, retailer, or cigarette vendor. Each cigarette vendor shall affix a license decal furnished by the department of revenue in a prominent position on each vending machine.

History: En. Sec. 4, Ch. 140, L. 1969; amd. Sec. 3, Ch. 445, L. 1975.

Amendments

The 1975 amendment inserted the second sentence; added "and are not transferable" to the fourth sentence; added the classifications sub-jobber and cigarette vendor to the classifications wholesaler and retailer in the next to last sentence; and added the last sentence.

84-5606.6. Disposition of license fees—appropriations—transfer to general fund—justification of expenses. All license fees collected under the provisions of this act shall be deposited with the state treasurer in the department's cigarette enforcement account in the earmarked revenue fund. There shall be appropriated to the department, from said cigarette enforcement account, such sum as may be necessary to comply with the provisions of this act for the fiscal biennium ending June 30, 1971. On or before June 30, 1971, the department shall pay to the state treasurer to the credit of the state general fund, all funds in excess of seven thousand five hundred dollars ($7,500) in said cigarette enforcement account, not needed for the administration of this act.

For the biennium beginning July 1, 1971, and each biennium thereafter, there shall be appropriated to the department a sum deemed justified and reasonable to operate the department's cigarette enforcement division, providing that after payment of all pending and known expenses, all sums so appropriated in excess of seven thousand five hundred dollars ($7,500) not needed for the administration of this act, shall be transferred to the state general fund to be available for general fund purposes. Such transfer shall be made within fifteen (15) days of the last day of the biennium.

All expenses charged against said cigarette enforcement account shall be justified by itemized claims coupled with standard accounting reports.

History: En. Sec. 5, Ch. 140, L. 1969; amd. Sec. 208, Ch. 516, L. 1973; amd. Sec. 6, Ch. 286, L. 1977.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in four places.

The 1977 amendment deleted "monthly" after "deposited" in the first sentence of the first paragraph.

84-5606.7. Affixing of insignia. Wholesalers and retailers licensed under this act may buy, sell or have in their possession only cigarettes which have the insignia provided for in this act on each package. The insignia provided for in this act shall be sold to, and affixed by, licensed wholesalers and licensed retailers only.

History: En. Sec. 6, Ch. 140, L. 1969.

84-5606.8. Revocation or suspension of license—hearing and appeal—duration—sale of cigarettes after revocation or suspension a misdemeanor—forfeiture. The department may revoke or suspend the license of any wholesaler, sub-jobber, retailer, or cigarette vendor for failure to comply with any provision of this act or of the Montana Cigarette Sales Act (sections 51-301 through 51-314, R. C. M. 1947), and with any lawful rule or regulation of the department made pursuant to said laws. Any person aggrieved by such revocation or suspension may apply to the department

for a hearing which shall be open to the public, and may further appeal to the court, as hereinafter provided. When a license has been duly revoked, no license shall again issue to such licensee for a period of one (1) year thereafter. When a license has been duly suspended, the suspension may be for any period not to exceed one (1) year. Any person who shall sell cigarettes after his license has been revoked or suspended is guilty of a misdemeanor, and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

History: En. Sec. 7, Ch. 140, L. 1969; amd. Sec. 209, Ch. 516, L. 1973; amd. Sec. 4, Ch. 445, L. 1975.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

The 1975 amendment added the classifications sub-jobber and cigarette vendor to the classifications wholesaler and retailer in the first sentence; and substituted "the Montana Cigarette Sales Act" for "the Unfair Cigarette Sales Act" in the first sentence.

84-5606.9. Unlawful acts when license not current and valid—sales to licensed wholesalers, subjobbers, retailers and cigarette vendors only—misdemeanor—forfeiture. No person shall sell, offer to sell, or possess with intent to sell, any cigarettes, at wholesale or retail unless his license is current and valid, under the provisions of this act. No person shall sell, offer to sell or possess with intent to sell, any cigarettes, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, retailer or vendor who is not licensed under this act or who is not licensed by the state in which he sells, offers to sell or intends to sell cigarettes. Any person violating the provisions of this section is guilty of a misdemeanor, and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

History: En. Sec. 8, Ch. 140, L. 1969; amd. Sec. 1, Ch. 319, L. 1973.

Amendments

The 1973 amendment inserted the second sentence.

Effective Date

Section 2 of Ch. 319, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 15, 1973.

84-5606.10. Tax imposed by section 84-5606. The tax referred to in this act shall mean the tax imposed by section 84-5606, R. C. M. 1947. The full face value of the insignia or tax shall be added to the cost of the cigarettes and recovered from the ultimate consumer or user.

History: En. Sec. 9, Ch. 140, L. 1969.

84-5606.11. Only licensed wholesalers and retailers to affix insignia. Insignia shall be affixed to packages of cigarettes only by licensed wholesalers and licensed retailers.

History: En. Sec. 10, Ch. 140, L. 1969.

84-5606.12. Purchase of insignia at discount to defray costs—defrayment inapplicable to certain portion of tax. Every licensed wholesaler and licensed retailer shall be entitled to purchase said insignia at full face value less eight per cent (8%) of the face value, upon payment therefor, as defrayment of the costs of affixing insignia and precollecting such tax on behalf of the state of Montana. This defrayment is not applicable to that

portion of the tax collected for any veterans' honorarium or long-range building program.

History: En. Sec. 11, Ch. 140, L. 1969.

Calculating Wholesale Price

Despite provisions of this section for discount to wholesalers in purchasing tax insignia, the full face value of the insignia is to be used in calculating wholesale cigarette price under section 51-301, so that board of equalization formula reducing wholesale cost by discount became improper with enactment of chapter 140 of 1969 Laws. Montana Assn. of Tobacco & Candy Distributors v. State Board of Equalization, 156 M 108, 476 P 2d 775.

84-5606.13. Use of tax meter machine authorized—insignia to be approved—marking of imported packages of cigarettes required—supervision of machines—charge—report. The department of revenue may authorize any wholesaler or retailer of cigarettes licensed under this act to use a tax meter machine with which to imprint an insignia upon each package of cigarettes imported, sold or delivered in this state. The insignia shall be one approved by the department. Each package of cigarettes imported into this state, delivered or sold therein shall be marked with the proper insignia of such tax-stamping meter and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any wholesaler or retailer licensed under this act. The department shall supervise and check the operation of such tax meter machines. The operator of such machine before using the same, shall take the meter thereof to the county treasurer, of the county in which the machine is operated, who is authorized to, and shall set said meter for the number of packages specified and required by the operator. Prior to setting said meter the county treasurer shall charge said operator the amount of money proper for said setting, less the expense defrayment of eight per cent (8%) provided for in section 11 [84-5606.12]. The county treasurer shall collect this amount in advance unless the board has allowed the purchaser credit as provided in section 14 [84-5606.15]. The county treasurer shall report to the department on forms prescribed by it, the name of the licensed wholesaler or licensed retailer and the number of packages for which said meter was set and shall forward to the department any amounts collected from said licensee.

History: En. Sec. 13, Ch. 140, L. 1969; amd. Sec. 210, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in five places.

84-5606.14. Resale of insignia prohibited—unused meter settings. No wholesaler or retailer shall resell to any other wholesaler or retailer any insignia purchased by him from the department. Any wholesaler or retailer who has on hand any meter settings at the time of discontinuing his business of selling cigarettes, may apply to the department and be paid the face value of said meter settings less the amount of the expense defrayment allowed by section 11 [84-5606.12].

History: En. Sec. 13, Ch. 140, L. 1969; amd. Sec. 211, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

84-5606.15. Payment for insignia or affixation within thirty days—bond—new licensees to pay cash. The department shall permit a licensed

wholesaler or licensed retailer to pay for the insignia purchased, or affixation of insignia, within thirty (30) days after the date of purchase and shall require such licensee to file with the department a bond issued by a surety company approved by the state department of insurance as to solvency and responsibility and authority to transact business in the state, for such amount as the department may fix, but not in excess of an amount equal to the maximum insignia purchases incurred for any thirty (30) day period in the previous calendar year; provided, however, that any newly licensed wholesaler or licensed retailer shall pay on a cash basis for one (1) complete calendar year, after which the department may permit him thirty (30) days to pay for the purchase or affixation of insignia and shall require a bond as hereinabove provided.

History: En. Sec. 14, Ch. 140, L. 1969; amd. Sec. 212, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in four places.

84-5606.16. Proceedings upon failure or refusal to pay tax—penalty. If any person fails or refuses to pay the tax required by this act when due, the department shall proceed to determine the tax due from such information as the department can obtain and shall assess the tax so determined against such person and notify him of the amount thereof. After such notice such tax shall become due and payable, together with a penalty of five per cent (5%) of such tax, or five dollars ($5) per day for each day after the date of such notice, whichever is greater.

History: En. Sec. 15, Ch. 140, L. 1969; amd. Sec. 213, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places in the first sentence.

84-5606.17. Tax meter users to keep certain records—examination of records. All tax meter users shall keep for a period of one (1) year, all invoices of cigarettes purchased and imported by them, all receipts issued by them and insignia purchased, also, an accurate record of all sales of cigarettes by such tax meter users, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point and destination. Such tax meter users shall permit the department, its assistants, authorized agents or representatives to examine all taxable items of cigarettes, invoices, receipts, books, paper, memoranda and records, as may be necessary to determine whether the tax meter machine has been used as required, or the insignia required by this act had been purchased and used, or to determine the amount of such tax as may be due or unpaid.

History: En. Sec. 16, Ch. 140, L. 1969; amd. Sec. 214, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the beginning of the second sentence.

84-5606.18. Sale and use of cigarettes a misdemeanor if insignia requirements not met. Every person who sells any package of cigarettes which does not bear the insignia required by this act and every person who uses or consumes a cigarette within this state, taken from a package which

does not bear the required insignia, is guilty of a misdemeanor and shall be punished as hereinafter provided.

History: En. Sec. 17, Ch. 140, L. 1969; amd. Sec. 12, Ch. 126, L. 1977.

Amendments

The 1977 amendment substituted "taken from a package which does not bear the required insignia" for "unless the same shall be taken from the original package having affixed thereto the insignia required by this act"; and made minor changes in phraseology and punctuation.

84-5606.19. Place where violations committed deemed a nuisance. Every person having possession or control of, or who maintains a building or place where cigarettes are sold in violation of this act, or permits the same to be done in any place or building possessed, controlled or maintained by him, is guilty of maintaining and keeping a nuisance and the building or place so used, together with the personal property and fixtures used in connection therewith shall be deemed a nuisance, and such person shall be enjoined and such building or place, personal property and fixtures abated as a nuisance, at the instance of the state.

History: En. Sec. 18, Ch. 140, L. 1969.

84-5606.20. Shipments or deliveries into or out of state to be reported by carrier—form and contents of report. Every common carrier hauling, transporting or shipping into or out of the state of Montana, from or to any other state, any cigarettes shall report in writing such shipments or deliveries to the department, on forms furnished by the department, giving the date, the person to whom the same was consigned and delivered and the quantity as shown by the bill of lading, and such other information as the department may require.

History: En. Sec. 19, Ch. 140, L. 1969; amd. Sec. 215, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

84-5606.21. Transportation of cigarettes without insignia a misdemeanor unless in interstate commerce—vehicle, cigarettes and equipment subject to seizure and forfeiture. It shall be unlawful for any person to transport into, receive, carry or move from place to place within this state, except in the course of interstate commerce, any cigarettes which do not bear the insignia required by this act. Any person violating the provisions of this section is guilty of a misdemeanor and shall be punished as hereinafter provided, and any motor vehicle, airplane, conveyance, vehicle or other means of transportation, in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with such transportation, and found in such means of transportation, shall be subject to seizure by the department, its duly authorized agent, or any sheriff or deputy, or other peace officer, and shall be subject to forfeiture in the manner hereinafter provided.

History: En. Sec. 20, Ch. 140, L. 1969; amd. Sec. 216, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the end of the section.

84-5606.22. Inventory of seized property—application for return of property. Upon the seizure of any cigarettes, and within two (2) days thereafter, the person or officer making such seizure shall deliver an inventory of the property seized to the person from whom such seizure was made, if known, and file a copy thereof with the department. The person from whom the seizure was made, or any other person claiming an interest in the property seized, may apply for its return as provided in sections 95-713 through 95-716, R. C. M. 1947.

History: En. Sec. 21, Ch. 140, L. 1969; amd. Sec. 217, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the end of the first sentence.

84-5606.23. Investigations, inquiries and hearings authorized—testimony under oath—subpoena powers—finding and order to be made and filed. The department and its duly authorized agents are empowered to conduct investigations, inquiries, and hearings hereunder, and any member thereof, or any agent, is authorized to administer oaths and take testimony under oath, relative to the matter of inquiry or investigation. The director, or his authorized agent, may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry. The director, or his agent, after the hearing, shall make findings and an order, in writing, which findings and order shall be filed in the office of the department and open for public inspection.

History: En. Sec. 22, Ch. 140, L. 1969; amd. Sec. 110, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the beginning and near the end of the section; and substituted "director, or his" for "board, or its" at the beginning of the second and third sentences.

84-5606.24. Hearing or rehearing before state tax appeal board. Any person aggrieved by any action of the department or its duly authorized agents, under the provisions of this act, may apply to the state tax appeal board, in writing, for a hearing or rehearing thereon within 30 days after such action of the department or its authorized agents. The board shall promptly consider such application, set same for hearing and notify the applicant of the time and place fixed for such hearing or rehearing, which may be at its office or in the county of the applicant. After such hearing or rehearing, the board may make any further or other order in the premises as it may deem proper and lawful and shall furnish a copy thereof to the applicant. The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing (as defined in 82-4202) in connection with the administration of this act, upon at least 10 days' notice in writing to the person or persons to be investigated.

History: En. Sec. 23, Ch. 140, L. 1969; amd. Sec. 111, Ch. 405, L. 1973; amd. Sec. 7, Ch. 155, L. 1977.

Amendments

The 1973 amendment substituted "department" for "board" in three places; and inserted "state tax appeal" before board in the middle of the first sentence.

The 1977 amendment inserted "contested case" in the last sentence; inserted "licensing (as defined in 82-4202) in connection with" in the last sentence; and made minor changes in punctuation and style.

84-5606.25. Appeal to district court. Any person aggrieved by any action or decision of the state tax appeal board or a licensing decision of the department made under the provisions of this act may appeal therefrom to the district court in accordance with the Montana Administrative Procedure Act.

History: En. Sec. 24, Ch. 140, L. 1969; amd. Sec. 218, Ch. 516, L. 1973; amd. Sec. 8, Ch. 155, L. 1977.

Amendments

The 1973 amendment substituted "department" for "board" in four places.

The 1977 amendment substituted "state tax appeal board or a licensing decision of the department" for "department"; and substituted the reference to the Montana Administrative Procedure Act for former provisions establishing the procedure for appeal.

84-5606.26. Department's duties and powers—arrest, entry of complaint, and lawful search and seizure authorized. The department shall administer and enforce this act, and the director and his agents have the powers of peace officers and may arrest any person violating any provision of this act, enter a complaint before any court of competent jurisdiction, and lawfully search and seize and use as evidence any unlawful or unlawfully possessed license, stamp, or insignia found in the possession of any person or in any place.

History: En. Sec. 25, Ch. 140, L. 1969; amd. Sec. 112, Ch. 405, L. 1973; amd. Sec. 13, Ch. 126, L. 1977.

Amendments

The 1973 amendment substituted "department" for "board" at the beginning of the section; and substituted "director and his agents" for "the board, its members and agents" near the middle of the section.

The 1977 amendment made minor changes in phraseology and punctuation.

84-5606.27. Promulgation of rules and regulations. The department shall have the power and authority to prescribe all rules and regulations not inconsistent with the provisions of this act, for the detailed and efficient administration thereof. All such rules, regulations and orders promulgated shall be published promptly and a copy distributed to each wholesale licensee; be published cumulative annually, and maintained in full as a public record.

History: En. Sec. 26, Ch. 140, L. 1969; amd. Sec. 219, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the beginning of the section.

84-5606.28. County attorneys and peace officers to assist in enforcement of act—appointment of additional assistants and division authorized—presumption of violation. In the enforcement of this act, the department may call to its assistance, and it shall be the duty of any county attorney, or any peace officer, in this state, to assist the department in the enforcement of this act; and the board is hereby authorized to appoint such additional assistants, and to establish an additional division of cigarette enforcement, as may be required to carry out the provisions of this act. Whenever any cigarettes are found in the place of business of any unlicensed wholesaler, retailer or other person, without the insignia affixed and canceled, or not marked as having been received by the unlicensed wholesaler, retailer or person within the preceding seventy-two (72)

hours the presumption shall be that such cigarettes are kept therein in violation of the provisions of this chapter.

History: En. Sec. 27, Ch. 140, L. 1969; amd. Sec. 220, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

84-5606.29. Department entitled to sue for unpaid tax and costs—treble damages. In the case of any violation of this chapter, the department shall be entitled to sue, in the district where the department maintains its principal office for the amount of the unpaid tax and costs, including reasonable expense of the department in effecting collection of the unpaid tax. Where the court finds the failure to pay the tax has been willful, the court must, in addition, assess damages in treble the amount of the tax found to be due.

History: En. Sec. 28, Ch. 140, L. 1969; amd. Sec. 221, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places in the first sentence.

84-5606.30. Employment of clerical and field assistants—disposition of taxes—war veterans' compensation fund abolished. The department is hereby authorized to employ such clerical and field assistants as may be necessary to properly administer the provisions of this law. All moneys collected under the provisions of subdivision (2) of section 84-5606, less the expense of collecting all the taxes levied, imposed and assessed by said section 84-5606, shall be paid to the state treasurer and deposited as follows: fifty per cent (50%) in the general fund, fifteen per cent (15%) in the long-range building program account in the sinking fund, and thirty-five per cent (35%) in the long-range building program account in the bond proceeds and insurance clearance fund. All taxes levied, imposed and assessed under the provisions of subdivision (3) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund and shall, while any of the bonds hereafter issued and sold for the purpose of paying an honorarium, or adjusted compensation, to the residents of Montana who were in military service in the military forces of the United States in World War I or World War II, or any of the interest thereon, remain unpaid, be available for the payment thereof.

All taxes levied, imposed and assessed under the provisions of subdivision (4) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund, which shall, while any of the bonds hereafter issued and sold, in addition to the bonds authorized by said Initiative Measure No. 54, as originally enacted, or any of the interest upon such additional bonds, remain unpaid, be used only for the payment thereof, and of the expenses of administration of this act.

The War Veterans' Compensation Fund established by Initiative No. 54, as amended by chapter 44, Laws of 1957, is abolished and all moneys in the fund are transferred to a subfund in the bond proceeds and insurance

clearance fund. When all veterans' honoraria authorized by law have been paid, such moneys shall be transferred to the two (2) accounts in the sinking fund established by this section.

After all of the outstanding War Veterans' Compensation Bonds and World War I Compensation Bonds have been paid or redeemed, or after the necessary funds have been set aside for their payment or redemption, the balance of the proceeds theretofore collected under the provisions of subdivisions (3) and (4) of said section 84-5606 shall be transferred to the sinking fund account provided for in section 79-2203, R. C. M. 1947.

History: En. Sec. 29, Ch. 140, L. 1969; amd. Sec. 5, Ch. 222, L. 1971; amd. Sec. 222, Ch. 516, L. 1973.

Amendments

The 1971 amendment substituted the provisions for apportionment at the end of the second sentence of the first paragraph for a provision requiring deposit in the general fund of all moneys collected under subdivision (2) of sec. 84-5606.

The 1973 amendment substituted "department" for "board" at the beginning of the section.

Effective Date

Section 6 of Ch. 222, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 5, 1971.

84-5606.31. Violation of act a misdemeanor unless otherwise provided —penalties. Unless hereinbefore expressly otherwise provided, the violation of any provision of this act shall constitute a misdemeanor, and any person violating any such provision shall be punished by a fine of not less than one hundred dollars ($100), or more than five hundred dollars ($500), or by imprisonment in the county jail for not less than thirty (30) days or more than six (6) months, or by both such fine and imprisonment; and if such person is the holder of a license issued under this act, such license shall be revoked by the department for a period of one (1) year.

History: En. Sec. 30, Ch. 140, L. 1969; amd. Sec. 223, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the end of the section.

Separability Clause

Section 31 of Ch. 140, Laws 1969 read "The provisions of this act shall be severable and if any of its provisions shall be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 32 of Ch. 140, Laws 1969 read "Sections 84-5601 through 84-5605, R. C. M. 1947, and sections 84-5607 through 84-5623, R. C. M. 1947, are repealed."

84-5607 to 84-5623. Repealed.

Repeal

Sections 84-5607 to 84-5623 (Secs. 7 to 23, Ch. 289, L. 1947; Sec. 16, Initiative No. 54, L. 1951, p. 781; Sec. 1, Ch. 123, L. 1953; Secs. 4 to 6, Ch. 18, L. 1957; Sec. 7, Ch. 44, L. 1957; Sec. 2, Ch. 222, L. 1957; Sec. 209, Ch. 147, L. 1963; Sec. 7, Ch. 270, L. 1963; Sec. 6, Ch. 318, L. 1967), relating to the administering of the cigarette tax, were repealed by Sec. 32, Ch. 140, Laws 1969.

CHAPTER 57—PUNCH BOARDS, PULL BOARDS AND SIMILAR DEVICES—LICENSE

84-5703 to 84-5717. Repealed.

Repeal

Sections 84-5703 to 84-5717 (Secs. 1 to 15, Ch. 201, L. 1951), relating to state tax on trade stimulators, were declared unconstitutional in State v. Turisch, 127 M 504, 267 P 2d 641 and were repealed by Sec. 15, Ch. 126, Laws 1977 and by Sec. 27, Ch. 508, Laws 1977.

84-5718, 84-5719. Repealed.

Repeal

Sections 84-5718, 84-5719 (Secs. 1, 2, Ch. 88, L. 1951), relating to tax by cities, towns, and counties on trade stimulators, were repealed by Sec. 15, Ch. 126, Laws 1977 and by Sec. 27, Ch. 508, Laws 1977.

CHAPTER 58—PRODUCTION CREDIT ASSOCIATIONS—TAXATION

Section
84-5801. Production credit associations—assessment and payment.

84-5801. Production credit associations — assessment and payment. Every production credit association organized under the provisions of section 1131d of Title 12, United States Codes annotated shall be assessed for and pay taxes upon all real and personal property owned by such association, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained by deducting from the amount of loans, including loans secured by mortgage on real estate or personal property, the amount of such loans discounted, and any indebtedness representing money borrowed for use as moneyed capital. Said moneyed capital shall be taxed at the same rate and take the same classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith.

The secretary or managing agent of every such association shall furnish to the assessor of the county in which the principal office of such association is located, within five (5) days after demand therefor, a statement in such detail as the department of revenue or its agent may require, verified by his oath of the resources and liabilities of such association as disclosed by its books, at the close of business on December 31 of the preceding year. If such secretary or managing agent shall fail to make the statement hereby required, the department of revenue or its agent shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such association. The department of revenue or its agent shall thereupon make an assessment of the real estate and personal property owned by such association, and of the moneyed capital employed in the business of such association which assessment shall be as fair and equitable as he may be able to make from the best information available, or said assessor may, for the purpose of said assessment, adopt the figures disclosed by any prior report made by such association to any state or federal officer pursuant to any state or federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

History: En. Sec. 1, Ch. 35, L. 1951; amd. Sec. 113, Ch. 405, L. 1973; amd. Sec. 19, Ch. 388, L. 1975.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor in the first three sentences of the second paragraph.

The 1975 amendment substituted "at the close of business on December 31 of the preceding year" for "at twelve o'clock noon on the first Monday of March in each year" at the end of the first sentence in the second paragraph.

CHAPTER 59—MICACEOUS MINERAL MINES—LICENSE TAXES

Section
84-5902. Persons subject to tax.
84-5903. Quarterly payment.
84-5904. Statement filed with state department of revenue.
84-5905. Records.
84-5906. Quarterly statement—payment of tax.
84-5907. Failure to file statement—determination of tax—collection.

84-5901. Repealed.

Repeal

Section 84-5901 (Sec. 1, Ch. 50, L. 1951), relating to the definition of person, was repealed by Sec. 24, Ch. 52, Laws 1977.

84-5902. Persons subject to tax. Every person engaged in or carrying on the business of working or operating any mine or mining property in the state of Montana from which vermiculite, perlite, kerrite, maconite, or any other micaceous minerals are mined, extracted, or produced must pay to the department of revenue, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business in an amount equal to 5 cents per ton for each and every ton of concentrates mined, extracted, or produced by such person during such year.

History: En. Sec. 2, Ch. 50, L. 1951; amd. Sec. 224, Ch. 516, L. 1973; amd. Sec. 1, Ch. 209, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the middle of the section.

The 1977 amendment deleted from the list of types of mines whose operators are subject to tax under this section those producing "hydrous silicates"; deleted "for the year 1951 and each year thereafter, when engaged in or carrying on such business in this state" before "pay to the department of revenue" near the middle of the section; and made minor changes in phraseology, punctuation and style.

Cross-References

Multistate tax compact, sec. 84-6701.

84-5903. Quarterly payment. Such annual license tax as imposed by section 84-5902 shall be paid in quarterly installments for the quarters ending, respectively, March thirty-first, June thirtieth, September thirtieth and December thirty-first of each year, beginning with the quarter ending March 31, 1951, and the amount of such license tax due for each such quarter shall be paid to the state department of revenue within thirty (30) days after the end of each of such quarter.

History: En. Sec. 3, Ch. 50, L. 1951; amd. Sec. 225, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-5904. Statement filed with state department of revenue. Each and every person engaged in or carrying on the business specified in section

84-5902, must, at the date when this act becomes effective, but not later than thirty (30) days thereafter, and every person who shall, after the date this act becomes effective, engage in such business, must immediately upon engaging therein, file with the state department of revenue a certificate and statement on forms prescribed by the state department of revenue, which shall contain the name under which such person is engaging in and carrying on such business within this state, giving the name of the place or places of business or location of plants within this state; the name and address of the managing agent in this state if a corporation, joint-stock company or association; or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company or corporation, under the laws of what state organized, its principal officers; and such other information as the state department of revenue may deem necessary.

History: En. Sec. 4, Ch. 50, L. 1951; amd. Sec. 226, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-5905. Records. Every such person shall keep a record in such form as the state department of revenue may require of all such products mined or produced by him in this state. Such records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its agents or employees.

History: En. Sec. 5, Ch. 50, L. 1951; amd. Sec. 227, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places; and deleted "members" before "agents or employees" at the end of the section.

84-5906. Quarterly statement—payment of tax. Each and every person must, within 30 days after the end of each quarter, make out on forms prescribed by the department of revenue and deliver to the department a statement showing the total number of tons of concentrates of vermiculite, perlite, kerrite, maconite, or any other micaceous minerals mined or produced by such person during each month of such quarter and during the whole quarter and such other information as the department may require, together with the total amount due to the state as license taxes for such quarter, and must, within such 30 days and at the same time such statement is delivered to the department, pay to the department the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Any person engaged in carrying on such business at more than one place or operating more than one mine in this state may include all thereof in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: En. Sec. 6, Ch. 50, L. 1951; amd. Sec. 228, Ch. 516, L. 1973; amd. Sec. 2, Ch. 209, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

The 1977 amendment deleted from the beginning of the section language providing that the tax was collectible beginning 30 days after the quarter ending

March 31, 1951; deleted "hydrous silicates" from the list of minerals on which statements must be filed; substituted "the department" before "may require" near the middle of the first sentence for "said board"; deleted the former second sentence, which provided that the statement must be signed and sworn, and specified by whom; added the last sentence; and made minor changes in phraseology, punctuation and style.

84-5907. Failure to file statement—determination of tax—collection. (1) If any person shall fail, neglect, or refuse to file any statement required by 84-5906 within the time required or shall fail to pay the tax required by this act on or before the date such payment is due, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the amount produced by such person within this state during such quarter and during each month thereof and shall determine and fix the amount of the license taxes due to the state from such person for such quarter.

(2) The department of revenue shall add to the amount of all delinquent micaceous mineral mines license taxes a penalty of 10% of the amount of such license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment. The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 85-5906 is provided.

(3) The department shall mail, to the person required to file a quarterly statement and pay any license tax, a letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter shall advise that if payment is not made within 15 days a lien may be filed. Upon receipt of the letter the person shall remit to the department, within 15 days, the full amount of license tax, penalty, and interest due. All tax, penalty, and interest due from any person under this chapter shall be a lien upon any and all real property of such person upon the filing by the department of the duplicate tax assessment statement in the office of the county clerk in the county where such real property is situated. The lien has precedence over any other claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced at law.

History: En. Sec. 7, Ch. 50, L. 1951; amd. Sec. 229, Ch. 516, L. 1973; amd. Sec. 3, Ch. 209, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

The 1977 amendment inserted the subsection (1) designation; deleted from the end of subsection (1) provisions for preparation of a statement of the amount of delinquent taxes, the addition of a penalty and interest, and delivery of the statement to the attorney general for collection; added subsections (2) and (3); and made minor changes in phraseology and style.

CHAPTER 60—MIGRATORY PERSONAL PROPERTY—TAXATION

Section
84-6008. Assessment of personal property brought into the state—exceptions.
84-6010. Law governing assessment, levy and collection.
84-6011. Proration of tax on personal property coming into state after April first.
84-6012. Livestock brought into state—notice to department of revenue or its agent.
84-6013. Collection of tax on livestock.
84-6014. Intention to move livestock from one county to another—notice—proration of tax.
84-6015. Custom combiner's tax—collection—distribution—not transferable.

84-6008. Assessment of personal property brought into the state—exceptions. (1) Property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) any personal property including livestock brought, driven, or coming into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) the property which comes to rest and becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) Nothing in this section shall be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer in addition to the tax levied against the inventory of said merchant or dealer on the regular assessment date.

(4) This section shall not apply to motor vehicles brought, driven, or coming into this state by any nonresident, migratory, bona fide agricultural workers temporarily employed in agricultural work in Montana if the motor vehicles are used exclusively for transportation of agricultural workers.

(5) Agricultural harvesting machinery classified under classes eight and twelve, licensed in other states, and operated on the lands of persons other than the owner of the machinery under contracts for hire shall be subject to a fee, in lieu of taxation, of $35 per machine for a 60-day period. The machines shall be subject to taxation under classes eight and twelve only if they are sold in Montana.

History: En. Sec. 1, Ch. 41, L. 1953; amd. Sec. 4, Ch. 290, L. 1967; amd. Sec. 1, Ch. 370, L. 1974; amd. Sec. 65, Ch. 566, L. 1977.

Amendments

The 1967 amendment substituted "which is used in * * * property of the state" for "and which shall remain in the state for a period not less than thirty (30) days" before "shall be subject"; deleted "and remain" after "thus be"; deleted "and" after "county of the state"; substituted "any" for "an additional" after "assess or levy"; and substituted "in addition to * * * assessment date" for "so long as such addition does not materially increase the inventory or stock which has been duly assessed to such merchant or dealer as of the regular assessment date" before the third proviso.

The 1974 amendment added the last two

sentences pertaining to the property tax liability of harvesting machinery owned by custom combine operators.

The 1977 amendment designated the former first sentence as subsections (1) through (4); designated the last two sentences as subsection (5); substituted "classes eight and twelve" in two places in subsection (5) for "class 2"; and made minor changes in phraseology, punctuation and style.

Cross-References

Multistate tax compact, sec. 84-6701.

Purchase from Dealer

Where new truck was brought into the state subsequent to the first day of January as replacement to a dealer's stock and therefore exempt from taxation under this section, truck was not subject to personal property taxation to the purchaser of the vehicle at the time of purchase, since he was not the owner of the truck on the date fixed by law for the assessment of property. Schwartz v. Berg, 147 M 178, 411 P 2d 736.

DECISIONS UNDER FORMER LAW

Motor Vehicle Inventory

State board of equalization would be enjoined from assessing cars or trucks brought into state as dealer's inventory after assessment date since dealer would be taxed thereby in violation of proviso in former statute limiting subsequent tax assessments to material increases in inventory only. Hardin Auto Co. v. Alley, 149 M 1, 422 P 2d 346.

84-6009. Repealed.

Repeal

This section (Sec. 2, Ch. 41, L. 1953), which dealt with tax laws in relation to listing of personal property, was repealed by Sec. 6, Ch. 290, Laws 1967.

84-6010. Law governing assessment, levy and collection. All property mentioned in the preceding section shall be assessed at the same value as property of like kind and character and in the assessment, levy and collection of the tax shall be governed by the provisions of sections 84-4201 to 84-4211, inclusive, as the same exist or are amended, except livestock taxation which is governed by Title 84, chapter 52.

History: En. Sec. 3, Ch. 41, L. 1953; amd. Sec. 7, Ch. 260, L. 1977.

Amendments

The 1977 amendment added "except livestock taxation which is governed by Title 84, chapter 52" to the end of the section.

84-6011. Proration of tax on personal property coming into state after April first. If such personal property is brought or driven or comes into any county before the assessment date, the tax shall be the full amount of the tax computed as provided above, but if brought, driven or coming into the county after the assessment date, the tax shall be prorated according to the ratio which the number of months the property has its taxable situs in the county bears to the total number of months in said year.

History: En. Sec. 4, Ch. 41, L. 1953; amd. Sec. 8, Ch. 260, L. 1977.

Amendments

The 1977 amendment substituted "the assessment date" in two places for "April first"; substituted "the property has its taxable situs in the county" near the end of the section for "remaining in said calendar year"; and made minor changes in punctuation.

84-6012. Livestock brought into state—notice to department of revenue or its agent. The owner or the agent, manager or foreman of any person, corporation, or association bringing livestock into this state after the first day of January shall immediately after said livestock crosses the state line,

forward to the department of revenue or its agent in the county into which the livestock is moved, a registered letter, which letter shall contain the name of the owner of such livestock, of the number thereof, the brand thereon, and the ages of the same, together with the time and place at which said livestock was brought across the state line, provided, that the department of livestock at least once each month furnish, from own records to the department of revenue or its agent in the county into which such livestock is moved, a list of the number and kind of livestock so moved, together with the name of the owner thereof.

History: En. Sec. 5, Ch. 41, L. 1953; amd. Sec. 114, Ch. 405, L. 1973; amd. Sec. 20, Ch. 388, L. 1975.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor in two places; and made a minor change in phraseology.

The 1975 amendment substituted "first day of January" for "first Monday in March" near the beginning of the section; substituted "department of livestock" for "Montana livestock sanitary board" in the middle of the section; and made minor changes in phraseology.

84-6013. Collection of tax on livestock. The department of revenue or its agent upon receipt of such letter or other information, that livestock has been brought into his county from outside of the state, after the first day of January in any year, shall immediately proceed under the provisions of chapter 52.

History: En. Sec. 6, Ch. 41, L. 1953; amd. Sec. 115, Ch. 405, L. 1973; amd. Sec. 21, Ch. 388, L. 1975; amd. Sec. 9, Ch. 260, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor" at the beginning of the section.

The 1975 amendment substituted "first day of January" for "first Monday in March."

The 1977 amendment substituted "chapter 52" for "section 84-4201" at the end of the section.

84-6014. Intention to move livestock from one county to another—notice—proration of tax. If any owner of livestock driven into the state as hereinbefore provided intends to move said livestock from the county of entry to another county of this state for grazing purposes, he shall file with the department of revenue and its agent in the initial county and in the county to which the livestock is to be moved a notice to that effect, giving the number and kind of livestock and the brand thereon, and the time he intends to graze such livestock in the second county, and the department or its agent shall prorate the tax on such livestock in conformity with 84-6011.

History: En. Sec. 7, Ch. 41, L. 1953; amd. Sec. 116, Ch. 405, L. 1973; amd. Sec. 10, Ch. 260, L. 1977.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor in two places.

The 1977 amendment inserted "and in the county to which the livestock is to be moved" in the middle of the section; substituted "84-6011" at the end of the section for "the provisions of sections 84-5202 to 84-5208, inclusive"; and made a minor change in phraseology.

Legislative Intent as to Transition.

Section 11 of Ch. 260, Laws 1977 read "When livestock are next assessed on January 1, 1978, the words "last assessment day" in 84-5201.4 mean January 1, 1977. 1977 taxes shall be computed on the average monthly inventory for the twelve months ending December 31, 1976."

84-6015. Custom combiner's tax—collection—distribution—not transferable. (1) In lieu of the taxes required by section 84-6008, R. C. M. 1947, motor vehicle license fees, Title 53, R. C. M. 1947, gross vehicle weight fees, overwidth and overheight permits, Title 32, R. C. M. 1947, a nonresident engaged in the business of custom combining who brings equipment into the state of Montana shall pay a fee of forty dollars ($40) per unit for a period beginning July 1 and ending October 31. A unit shall include:

(a) one (1) truck suitable for hauling grain,

(b) one (1) header trailer or one (1) combine trailer, and

(c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of his business of custom combining.

(2) The fee required by this section shall be collected by the department of highways. Upon payment of the fee the department of highways shall provide an identifying device to be displayed on each truck, header trailer or combine trailer and other equipment used by the nonresident in his business of custom combining in the state of Montana, which device shall be valid for a period beginning July 1 and ending October 31.

(3) All fees collected under this section shall be distributed not later than December 1 immediately following the period of license as follows: sixty-two and one-half per cent (62½%) to the county general fund in the county in which the permittee declares the greatest amount of time will be spent to operate, thirty-seven and one-half per cent (37½%) to the earmarked revenue fund for the department of highways.

(4) The identifying devices and fee paid for each unit shall not be transferable from one vehicle to another or transferable on the sale or change of ownership.

(5) Any owner or operator of any equipment included in the unit definition in subsection (2) of this section who violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars ($300), or by a sentence of not more than sixty (60) days in the county jail, or both.

History: En. 84-6015 by Sec. 1, Ch. 371, L. 1974; amd. Sec. 1, Ch. 50, L. 1975.

Title of Act

An act to provide that custom combiners shall pay a forty dollar ($40) tax per unit in lieu of certain other fees and taxes.

Amendments

The 1975 amendment inserted "and overheight" in subsection (1); substituted "fee" for "tax" throughout the section; in subsections (2) and (4) substituted "an identifying device" or "device" for "a prominent sticker" or "sticker"; deleted "vehicle in a" before "unit" in subsection (4); added subsection (5); and made minor changes in phraseology and punctuation.

CHAPTER 61—UNITED STATES PROPERTY—TAXATION

Section
84-6102. United States property held under contract of sale.
84-6103. United States property held under lease—assessment at value of leasehold.

84-6101. Property of United States held under contract, etc.

Cross-References

Multistate tax compact, sec. 84-6701.

84-6102. United States property held under contract of sale. When the property is held under a contract of sale or other agreement whereby upon payment the legal title is or may be acquired by the person, corporation, or association, the real property shall be assessed and taxed as defined in 84-301.2 through 84-301.19 [84-301.21] and 84-401 without deduction on account of the whole or any part of the purchase price or other sum due on the property remaining unpaid. The lien for the tax may not attach to, impair, or be enforced against any interest of the United States in the real property.

History: En. Sec. 2, Ch. 212, L. 1951; amd. Sec. 66, Ch. 566, L. 1977.

Amendments

The 1977 amendment substituted "taxed as defined in 84-301.2 through 84-301.19 and 84-401" for "taxed for the full value thereof"; and made minor changes in phraseology and punctuation.

84-6103. United States property held under lease—assessment at value of leasehold. When the property is held under lease, other interest, or estate therein less than the fee, except under contract of sale, the property shall be assessed and taxed as for the value as defined in 84-301.2 through 84-301.19 [84-301.21] of such leasehold, interest, or estate in the property and the lien for the tax shall attach to and be enforced against only the leasehold, interest, or estate in the property. When the United States authorizes the taxation of the property for the full assessed value of the fee thereof, the property shall be assessed for full assessed value, as defined in 84-401.

History: En. Sec. 3, Ch. 212, L. 1951; amd. Sec. 67, Ch. 566, L. 1977.

Amendments

The 1977 amendment substituted "value as defined in 84-301.2 through 84-301.19" in the first sentence for "true cash value"; inserted "assessed" before "value" two places in the last sentence; added "as defined in 84-401" at the end of the section; and made minor changes in phraseology and punctuation.

CHAPTER 62—MINES OR WELLS PRODUCING NATURAL GAS OR PETROLEUM —NET PROCEEDS TAX

Section

84-6201. Definitions.
84-6202. Statement of yield.
84-6203. Net proceeds—how computed.
84-6204. Deduction of drilling costs and capital expenditures.
84-6205. Assessment of royalties.
84-6206. False or fraudulent reports—procedure in case of.
84-6208. County assessors to compute taxes.
84-6211. Statement required on dissolution of corporation during taxpaying year.
84-6212. Examination of records by department of revenue.
84-6213. Lien of tax and penalty—enforcement of payment.

84-6201. Definitions. (1) The terms "operator" and "producer" mean any person who engages in the business of drilling for, extracting, or producing any natural gas, petroleum, or other crude or mineral oil.

(2) The term "well" includes each single well or group of wells, including dry wells, in one field or production unit and under the control of one operator or producer.

History: En. Sec. 1, Ch. 135, L. 1955; amd. Sec. 21, Ch. 52, L. 1977; amd. Sec. 18, Ch. 98, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 52 and once by Ch. 98.

Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 52, Laws of 1977, deleted a definition of person and made a minor change in phraseology. For prior version, see parent volume.

Chapter 98, Laws of 1977, deleted "mining" after "engages in the business of" in subsection (1); added subsection (2); and made minor changes in phraseology, punctuation and style.

84-6202. Statement of yield. Each operator or producer of natural gas, petroleum, or other crude or mineral oil must on or before March 31 in each year make out and deliver to the department of revenue a statement of the gross yield of such natural gas, petroleum, or other crude or mineral oil from each well owned or worked by such person during the next preceding calendar year and the value thereof. Such statement shall be in the form prescribed by the department and must be verified by the oath of the operator or producer or the manager, superintendent, agent, president, or vice-president of such corporation, association, or partnership. Such statement shall show the following:

(1) the name and address of the operator, together with a list in duplicate of the names and addresses of any and all persons owning or claiming any royalty interest in the production from the well or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

(2) the description and location of the well;

(3) the number of cubic feet of natural gas, barrels of petroleum, or other crude or mineral oil extracted or produced from the well during the period covered by the statement;

(4) the gross yield or value in dollars and cents;

(5) actual cost of extracting product from well;

(6) cost of construction, repairs, and betterment;

(7) actual cost of fire insurance and workers' compensation insurance.

History: En. Sec. 2, Ch. 135, L. 1955; amd. Sec. 1, Ch. 159, L. 1969; amd. Sec. 117, Ch. 405, L. 1973; amd. Sec. 19, Ch. 98, L. 1977.

Amendments

The 1969 amendment added the last three paragraphs.

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization throughout the section.

The 1977 amendment substituted "Each operator or producer" at the beginning of the section for "Every person engaged in mining upon any mine whatsoever containing"; substituted references to "well" for references to "mine" throughout the section; substituted "worker's compensation" for "workmen's compensation" in subdivision (7); deleted the last three paragraphs which provided for extension of time to file statements and penalties for failure to file; and made minor changes in phraseology, punctuation and style.

84-6203. Net proceeds—how computed. (1) The department of revenue shall calculate and compute from the returns the gross product yielded from such well and its gross value for the year covered by the statement and shall calculate the net proceeds of the well yielded to the producer, which net proceeds shall be determined by substracting from the value of the gross products thereof the following:

(a) all royalty paid or apportioned in cash or in kind by the operator or producer;

(b) all moneys expended for necessary labor, machinery, and supplies needed and used in the operations and developments;

(c) all moneys expended for improvements, repairs, and betterments necessary in and about the working of the well;

(d) all moneys expended for fire insurance and workers' compensation insurance and for payments by operators to welfare and retirement funds when provided for in wage contracts between operators and employees.

(2) No moneys invested in the well and improvements during any year, except the year for which such statement is made, may be included in such expenditures, except as provided in 84-6204; and such expenditures may not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the well or superintending the management thereof.

History: En. Sec. 3, Ch. 135, L. 1955; amd. Sec. 230, Ch. 516, L. 1973; amd. Sec. 20, Ch. 98, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

The 1977 amendment inserted the subsection designations (1) and (2); redesignated former subdivisions 1 through 4 as subdivisions (1)(a) through (1)(d); substituted "well" for "mine" throughout the section; deleted "in dollars and cents" in three places in subsection (1) after "value"; substituted references to operator or producer for references to person engaged in mining; substituted "worker's compensation" in subdivision (1)(d) for "workmen's compensation"; and made minor changes in phraseology, punctuation and style.

84-6204. Deduction of drilling costs and capital expenditures. The state department of revenue in computing the deductions allowable for cost of drilling wells completed during the period and for other capital expenditures shall allow 10% of such cost each year for a period of 10 years, beginning after the 3 year exemption period allowed in 84-2213 for qualified wells; provided, however, the operator or producer may elect to amortize the cost over a period of 2 years if the well is less than 3,000 feet deep.

The department shall also compute and allow deductions for any capital expenditures made during the year 1953, where the same have not been previously allowed in computing such net proceeds under the laws of the state of Montana.

History: En. Sec. 4, Ch. 135, L. 1955; amd. Sec. 231, Ch. 516, L. 1973; amd. Sec. 5, Ch. 256, L. 1977.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization near the beginning of each paragraph.

The 1977 amendment inserted "beginning after the 3 year exemption period allowed in 84-2213 for qualified wells" in the first paragraph; and made minor changes in style.

84-6205. Assessment of royalties. The amount of royalty received shall be considered net proceeds to the recipient and shall be assessed as follows: upon receipt of the lists or schedules setting forth the names and addresses of any and all persons owning or claiming royalty and the amount paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the department of revenue shall proceed to assess and tax the same as net proceeds of mines.

History: En. Sec. 5, Ch. 135, L. 1955; amd. Sec. 232, Ch. 516, L. 1973; amd. Sec. 68, Ch. 566, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle of the section.

The 1977 amendment substituted "assess and tax the same" for "the assessment of all such royalties, and shall assess the same at the full cash value of the money or product yielded or accrued during such preceding calendar year, and the same shall be taxed"; and made minor changes in phraseology, punctuation and style.

84-6206. False or fraudulent reports—procedure in case of. If any such report required by this act contains any willfully false or fraudulent statement as to the gross amount received by any person so engaged in mining as aforesaid, for any mine's product, then the said state department of revenue shall compute the gross value of such mine's product, and such gross value shall be based upon the market value at the point of production. Should there be no quotation covering any particular product, then the state department of revenue shall fix the value of such gross product in such manner as may seem to be equitable.

History: En. Sec. 6, Ch. 135, L. 1955; amd. Sec. 233, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

84-6207. Repealed.

Repeal

Section 84-6207 (Sec. 7, Ch. 135, L. 1955; Sec. 234, Ch. 516, L. 1973), relating to transmission of tax proceeds to county, was repealed by Sec. 22, Ch. 98, Laws 1977.

84-6208. County assessors to compute taxes. Immediately after the county board of commissioners has fixed tax levies on the second Monday in August, the county assessor shall compute the taxes on such net proceeds, except as provided in 84-2213, and royalty assessments, and shall deliver the book to the county treasurer on or before the fifteenth day of September. The county treasurer shall proceed to give full notice thereof to such operator and to collect the same in manner provided by law.

The operator or producer shall be liable for the payment of said taxes and same shall be payable by and shall be collected from such operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines; provided, however, that the operator may, at his option, withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon such royalty or royalty interest, after such withholding any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests.

History: En. Sec. 8, Ch. 135, L. 1955; amd. Sec. 1, Ch. 80, L. 1963; amd. Sec. 235, Ch. 516, L. 1973; amd. Sec. 6, Ch. 256, L. 1977.

Amendments

The 1973 amendment substituted "board of commissioners" for "board of equalization" near the beginning of the section.

The 1977 amendment inserted "except as provided in 84-2213" in the first sentence of the first paragraph.

Separability Clause

Section 7 of Ch. 256, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act

is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Cross-References

Multistate tax compact, sec. 84-6701.

84-6209. Repealed.

Repeal

Section 84-6209 (Sec. 9, Ch. 135, L. 1955; Sec. 236, Ch. 516, L. 1973), relating to penalties for failure to make statements, was repealed by Sec. 22, Ch. 98, Laws 1977.

84-6211. Statement required on dissolution of corporation during taxpaying year. Every person who shall cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by this act, and pay the tax due for such period as it transacted business, on or before the date of such cessation of business. The state department of revenue may grant a reasonable extension of time for filing a return upon good cause shown therefor.

History: En. Sec. 11, Ch. 135, L. 1955; amd. Sec. 237, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the second sentence.

84-6212. Examination of records by department of revenue. The state department of revenue shall have the right and power, at any time, to examine all books, records, papers and documents of such person pertaining to such business, in order to verify the statements made by such person, and if, from such examination, or from other information, said state department of revenue finds any statement, or any material part thereof, willfully false or fraudulent, said state department of revenue must assess in the same manner as provided for in section 84-6203.

History: En. Sec. 12, Ch. 135, L. 1955; amd. Sec. 238, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-6213. Lien of tax and penalty—enforcement of payment. The taxes and/or penalties on such net proceeds must be levied as the levy of other taxes is provided for, and every such tax and/or penalty is a lien upon the mine from which the natural gas, petroleum, or crude or mineral oil is mined or extracted, and is a prior lien upon all personal property and improvements used in the process of extracting such natural gas, petroleum, or crude or mineral oil; provided, however, that such personal or real property is owned by or under lease by the person who extracted said natural gas, petroleum, or other crude or mineral oil.

The tax and/or penalty on such net proceeds may be collected, and the payment thereof enforced, by the seizure and sale of the personal property upon which the said tax and/or penalty is a lien, in the same manner as other personal property is seized and sold for delinquent taxes, or by the sale of the mine and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however,

that a resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any two or all of the methods herein provided for may be used until the full amount of such tax and/or penalty is collected.

History: En. Sec. 13, Ch. 135, L. 1955; amd. Sec. 2, Ch. 159, L. 1969.

Amendments

The 1969 amendment inserted "and/or penalties" and "and/or penalty" after "taxes" and "tax" where the references appear.

CHAPTER 63—IMPORTERS TAX ON GASOLINE PURCHASED OUTSIDE STATE AND USED IN STATE

(Repealed—Section 8, Chapter 34, Laws of 1977; Section 1, Chapter 375, Laws of 1977)

84-6301 to 84-6308. Repealed.

Repeal

Sections 84-6301 to 84-6308 (Secs. 1 to 8, Ch. 174, L. 1955; Secs. 239 to 241, Ch. 516, L. 1973; Secs. 6, 7, Ch. 34, L. 1977), relating to importer's tax on gasoline were repealed by Sec. 1, Ch. 375, Laws 1977. Section 84-6303 also was repealed by Sec. 8, Ch. 34, Laws 1977.

CHAPTER 64—FLIGHT PROPERTY OF AIRLINE COMPANIES—ASSESSMENT AND TAXATION

Section
84-6401. Definitions.
84-6403. Report by airline company.
84-6404. Determination of value.

84-6401. Definitions. The following words and phrases, when used in this act, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(1) "Scheduled airline company" means any person who undertakes directly or indirectly to engage in the business of scheduled air commerce.

(2) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

(3) "Flight property" means aircraft fully equipped ready for flight used in air commerce.

(4) "Air commerce" means the transportation by aircraft of persons or property for hire in interstate, intrastate, or international transportation on regularly scheduled flights.

(5) "Equated plane hours" means hours spent by aircraft in flight or on the ground weighted according to the cargo capacity of each aircraft.

(6) "Operating" or "operated" means landings or takeoffs during interstate flight.

History: En. Sec. 1, Ch. 249, L. 1955; amd. Sec. 1, Ch. 367, L. 1969; amd. Sec. 22, Ch. 52, L. 1977.

Amendments

The 1969 amendment deleted "within the state of Montana" from the end of subdivision (d).

The 1977 amendment deleted a former subdivision (a) defining person; redesignated former subdivisions (b) through (g) as subdivisions (1) through (6); and made minor changes in phraseology and punctuation. For prior version, see parent volume and 1969 amendment note.

84-6402. Repealed.

Repeal

Section 84-6402 (Sec. 2, Ch. 249, L. 1955; Sec. 243, Ch. 516, L. 1973; Sec. 1, Ch. 328, L. 1975), relating to assessment of airline property, was repealed by Sec. 22, Ch. 98, Laws 1977.

84-6403. Report by airline company. Every airline company engaged in air commerce in this state shall annually file with the department of revenue, in such form as the department may require, a report under oath, showing the following:

(1) the name of the person or persons, association, joint-stock company, or corporation;

(2) under the laws of what state organized or existing;

(3) the location of its principal office;

(4) the location of its principal office in this state, if any;

(5) the number of aircraft of each type or kind, the total original cost, the average cost per plane, the total depreciated cost, and the average depreciated cost per plane at the end of the preceding calendar year;

(6) the number of shares of capital stock authorized, number of shares outstanding, the total par value and the total market value at the end of the preceding calendar year; the par value of outstanding bonds and long-term debt and the market value at the end of the preceding calendar year;

(7) income account showing operating revenues and expenses of the entire system and net operating income during the preceding calendar year;

(8) the total tonnage of passengers, express, and freight first received by the airline company in this state during the preceding calendar year plus the total tonnage of passengers, express, and freight finally discharged by it within this state during the preceding calendar year and the total of such tonnage first received by the airline company or finally discharged by it, within and without this state during the preceding calendar year;

(9) the total time in equated plane hours of all aircraft of the scheduled airline company in flight in this state during the preceding calendar year plus the total time of such aircraft on the ground in this state during the preceding calendar year and the total of such time in flight or on the ground within and without this state during the preceding calendar year;

(10) the number of revenue ton-miles of passengers, mail, express, and freight flown by the scheduled airline company within this state during the preceding calendar year and the total number of such miles flown by it within and without this state during the preceding calendar year;

(11) the number of arrivals and departures of all aircraft of the scheduled airline company in this state during the preceding calendar year and the total number of such arrivals and departures within and without this state during the preceding calendar year;

(12) such other information as the department of revenue may require.

History: En. Sec. 3, Ch. 249, L. 1955; amd. Sec. 243, Ch. 516, L. 1973; amd. Sec. 21, Ch. 98, L. 1977.

Amendments

The 1973 amendment substituted references to the department of revenue for

references to the state board of equalization in two places in the preliminary clause and in subdivision (12).

The 1977 amendment deleted "on or before the first day of May" after "shall annually" near the beginning of the section; and made minor changes in punctuation and style.

Repealing Clause

Section 22 of Ch. 98, Laws 1977 read "Sections 84-719, 84-720, 84-721, 84-722, 84-802.1, 84-803, 84-804, 84-903, 84-903.1, 84-904, 84-906, 84-907, 84-5408, 84-5410, 84-6207, 84-6209, 84-6402, 84-6405, 84-6405.1, 84-6406, 84-6407, 84-6408, and 84-6410, R. C. M. 1947, are repealed."

84-6404. Determination of value. The department of revenue shall determine the full and true valuation of all property of all airlines operating in this state or used by every scheduled airline company in air commerce. This valuation may be ascertained by:

(1) Determining the full and true valuation of all property, owned and operated by every scheduled airline company;

(2) Allocating to the state of Montana, from this total valuation, a valuation which represents this state's proper share of the valuation of the property, through the application of ratios, which are indicated in section 84-6403, subsections (8), (9), (10) and (11), against the total valuation; and

(3) Assessing, by the agent of the department of revenue in the county where they are located, buildings, furniture, and other personal property. These values shall be subtracted from the total state share to arrive at the value to be allocated.

(4) After making such assessment, the department shall give written notice thereof to the person or persons to whom the assessment is made.

History: En. Sec. 4, Ch. 249, L. 1955; amd. Sec. 2, Ch. 367, L. 1969; amd. Sec. 244, Ch. 516, L. 1973; amd. Sec. 2, Ch. 328, L. 1975.

Amendments

The 1969 amendment substituted "of all airlines operating in this state" for "operated" after "all flight property" and deleted "in this state" at the end of the first sentence and rewrote the second sentence, which read, "In determining the valuation apportioned to this state of such flight property, the board may consider the proportion of total tonnage in the state, total time in equated plane hours, number of revenue ton miles and number of arrivals and departures as required to be reported under section 84-6403."

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section; and added former subdivision (3).

The 1975 amendment deleted "as an integrated operation" at the end of subdision (1); deleted "flight" before "property" in subdivision (2); inserted subdivision (3); redesignated former subdivision (3) as subdivision (4); and made minor changes in phraseology and punctuation.

Effective Date

Section 3 of Ch. 367, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 15, 1967.

DECISIONS UNDER FORMER LAW

Basis for Assessment

Under former statute providing that board should determine valuation of all flight property used by scheduled airline in air commerce in state, assessment of airline using three types of aircraft but only one type in state was to be made only on that portion of airline's business arising directly from aircraft used in state, and depreciated value of aircraft used in state was the base for taxation. Western Air Lines, Inc. v. Michunovich, 149 M 347, 428 P 2d 3, cert. den. 389 U S 952, 88 S Ct 336.

84-6405, 84-6405.1. Repealed.

Repeal

Sections 84-6405, 84-6405.1 (Sec. 5, Ch. 249, L. 1955; Sec. 245, Ch. 516, L. 1973; Secs. 1, 2, Ch. 258, L. 1975), relating to taxpayer appearance to show cause for changing assessment and appeal to state tax appeal board, were repealed by Sec. 22, Ch. 98, Laws 1977.

84-6406 to 84-6408. Repealed.

Repeal

Sections 84-6406 to 84-6408 (Secs. 6 to 8, Ch. 249, L. 1955; Secs. 246 to 248, Ch. 516, L. 1973; Sec. 69, Ch. 566, L. 1977), relating to failure to file statements and assessment and apportionment of property, were repealed by Sec. 22, Ch. 98, Laws 1977.

84-6410. Repealed.

Repeal

Section 84-6410 (Sec. 10, Ch. 249, L. 1955; Sec. 249, Ch. 516, L. 1973), relating to extending time for report, was repealed by Sec. 22, Ch. 98, Laws 1977.

CHAPTER 65—LICENSE TAXES—RACING ASSOCIATIONS

(Repealed—Section 15, Chapter 196, Laws of 1965; Section 6, Chapter 216, Laws of 1967)

84-6502 to 84-6504. Repealed.

Repeal

These sections (Secs. 2 to 4, Ch. 57, L. 1961), relating to the taxing of racing associations, were repealed by Sec. 6, Ch. 216, Laws 1967.

CHAPTER 66—PROPERTY TAX ON HOUSE TRAILERS

Section

84-6601. Definitions.
84-6604. Penalty for failure to display or produce declaration, sticker or receipt.
84-6605. Act restricted to trailers subject to taxation.
84-6606. Verified declaration of destination on out-of-state mobile homes—delivery and affixing to vehicle—obtaining tax receipt—exemptions.
84-6607. State department of revenue to make regulations.
84-6608. Penalty for moving mobile home on which taxes due.

84-6601. Definitions. As used in this act:

(1) "Mobile home" means forms of housing known as "trailers," "house trailers" or "trailer coaches" exceeding eight (8) feet in width or thirty-two (32) feet in length designed to be moved from one place to another by an independent power connected thereto.

(2) "House trailer" means a form of housing designed to be moved from one place to another by an independent power connected thereto, which is either eight (8) feet wide or less or thirty-two (32) feet long or less.

(3) "Dealer" means a person engaged in the distribution or sale of mobile homes.

History: En. Sec. 1, Ch. 275, L. 1965; amd. Sec. 4, Ch. 296, L. 1967; amd. Sec. 2, Ch. 450, L. 1975.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

The 1975 amendment rewrote subdivision (2) which read "(2) 'House trailer' means; (a) A trailer or semitrailer other than a mobile home as defined in this section which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) whether mobile or stationary"; deleted subdivision (2)(b) which read "a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, whether mobile or stationary"; redesignated subdivision (2)(c) as subdivision (3); and made minor changes in style and punctuation.

84-6604. Penalty for failure to display or produce declaration, sticker or receipt. (1) Whoever makes a false or fraudulent declaration of destination, or, when required, fails to execute a declaration of destination or fails to produce a declaration of destination or tax paid receipt, if a tax paid receipt is required, is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail for not more than six (6) months, or by a fine of not more than five hundred dollars ($500), or both.

(2) Whoever fails to display a property tax paid sticker or to produce a property tax paid receipt from fifteen (15) days after the due date for personal property taxes of one (1) year to the due date for personal property taxes of the next year when the display of a tax paid receipt is required, commits a misdemeanor punishable by a fine of not less than ten dollars ($10) nor more than fifty dollars ($50) or confinement in the county jail for not more than thirty (30) days or both such fine and imprisonment. The sticker and receipt are not required for mobile homes which are classified as improvements to land.

History: En. Sec. 4, Ch. 275, L. 1965; amd. Sec. 7, Ch. 296, L. 1967; amd. Sec. 3, Ch. 450, L. 1975.

Amendments

The 1967 amendment inserted subsection (1); designated the old section as new subsection (2); substituted "Whoever fails" for "The failure" before "to display"; and deleted "the failure" before "to produce."

The 1975 amendment inserted "when the display of a tax paid receipt is required" in subsection (2); added the last sentence in subsection (2); and made a minor change in phraseology.

84-6605. Act restricted to trailers subject to taxation. The provisions of this act shall apply only to those mobile homes and house trailers, as defined in this act, subject to assessment and taxation under section 84-406 and section 84-6008.

History: En. Sec. 5, Ch. 275, L. 1965; amd. Sec. 8, Ch. 296, L. 1967.

Amendments

The 1967 amendment inserted "mobile homes and" before "house trailers."

84-6606. Verified declaration of destination on out-of-state mobile homes—delivery and affixing to vehicle—obtaining tax receipt—exemptions. (1) whoever brings a mobile home into the state of Montana shall immediately upon arrival in the state execute a written declaration verified under oath stating the destination of the mobile home and such other information as the state department of revenue shall require and shall deliver the original of the declaration to whoever is on duty at the nearest port of entry station, state vehicle weight station or such other places and persons as the state department of revenue may prescribe. He shall also immediately upon arrival in the state of Montana affix a copy of the declaration to the mobile home at a conspicuous place.

(2) Whoever moves a mobile home from a point within the state of Montana to another point within or without the state of Montana shall first:

(a) Execute the declaration provided for in subsection (1) of this section, deliver the original of it to the treasurer of the county in which the move originates or to such other person as the state department of revenue shall prescribe and affix a copy of it to the mobile home to be moved at a conspicuous place;

(b) Obtain from the county treasurer of the county in which the move originates a receipt showing payment in full of property taxes due with respect to that mobile home to the date it is moved.

(3) The provisions of subsection (2) (b) of this section shall not apply whenever a person moves a mobile home:

(a) From a point without to a point within the state of Montana.

(b) Between places of business of dealers within or without the state of Montana.

(c) From the place of business of a dealer to a point within or without the state of Montana.

History: En. Sec. 5, Ch. 296, L. 1967; amd. Sec. 250, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-6607. State department of revenue to make regulations. The state department of revenue may make reasonable rules and regulations necessary for or as an aid to effectuation of the purposes of this act.

History: En. Sec. 6, Ch. 296, L. 1967; amd. Sec. 251, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-6608. Penalty for moving mobile home on which taxes due. Any person, business, or corporation that moves a mobile home on which property taxes are unpaid is guilty of a misdemeanor.

History: En. 84-6608 by Sec. 1, Ch. 250, L. 1977.

Title of Act

An act to provide for a penalty for persons, businesses, or corporations moving mobile homes on which property taxes are delinquent.

CHAPTER 67—MULTISTATE TAX COMPACT

Section
84-6701. Compact adopted—text.
84-6702. Montana compact commissioner—director of revenue.
84-6703. Alternate.
84-6704. Advisory committee—members—reimbursement—meetings.

84-6701. Compact adopted—text. The "Multistate Tax Compact" is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as set forth herein below. Article VIII of the Multistate Tax Compact relating to interstate audits is specifically adopted.

ARTICLE I. PURPOSES.

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

2. Promote uniformity or compatibility in significant components of tax systems.

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

4. Avoid duplicative taxation.

ARTICLE II. DEFINITIONS.

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

2. "Subdivision" means any government unit or special district of a state.

3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.

4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

ARTICLE III. ELEMENTS OF INCOME TAX LAWS.

Taxpayer Option, State and Local Taxes.

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form.

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the $100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the $100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage.

3. Nothing in this Article relates to the reporting or payment of any tax other than an income tax.

ARTICLE IV. DIVISION OF INCOME.

1. As used in this Article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, co-operative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this Article.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this Article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this Article, the taxpayer may elect to allocate and apportion his entire net income as provided in this Article.

3. For purposes of allocation and apportionment of income under this Article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock

tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this Article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ARTICLE V. ELEMENTS OF SALES AND USE TAX LAWS.

Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates. Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

ARTICLE VI. THE COMMISSION.

Organization and Management.

1. (a) The Multistate Tax Commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of

taxes to which this compact applies. If there is more than one such agency, the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1 (e) of this Article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notice of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.

2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice-chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers.

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance.

4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1 (i) of this Article: provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1 (i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any person authorized by the commission.

(f) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII. UNIFORM REGULATIONS AND FORMS.

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all tax-

payers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

ARTICLE VIII. INTERSTATE AUDITS.

1. This Article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident: provided that such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this Article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this Article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satis-

factory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this Article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this Article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this Article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this Article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

ARTICLE IX. ARBITRATION.

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this Article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable

to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residents within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoenas, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this Article.

8. Unless the parties otherwise agree, the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's pro-

ceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL.

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

ARTICLE XI. EFFECT ON OTHER LAWS AND JURISDICTION.

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III [paragraph] (2) of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: provided that the definition of "tax" in Article VIII [paragraph] (9) may apply for the purposes of that Article and the commission's powers of study and recommendation pursuant to Article VI [paragraph] (3) may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

ARTICLE XII. CONSTRUCTION AND SEVERABILITY.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or of the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 17, L. 1969; amd. Sec. 1, Ch. 249, L. 1973; amd. Sec. 1, Ch. 163, L. 1975.

Compiler's Notes

The following states have adopted the Multistate Tax Compact: Alabama, Alaska, Arkansas, Florida, Hawaii, Idaho, Illinois, Indiana, Michigan, Missouri, Nebraska, Nevada, New Mexico, North Dakota, Oregon, Texas, Utah and Wyoming.

Title of Act

An act to adopt and implement the Multistate Tax Compact dealing with taxes paid by business firms.

Amendments

The 1973 amendment deleted "in the form substantially as follows" from the end of the first sentence of the preliminary paragraph; and added the second sentence to the preliminary paragraph.

The 1975 amendment added "in the form substantially as set forth herein below" to the first sentence in the preliminary paragraph.

Effective Date

For effective date of this act, see Article X, paragraph 1.

Section 2 of Ch. 163, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 26, 1975.

Cross-References

Advisory council appointed to comply with compact, sec. 82A-1803(2).

Cities and towns—taxation and license, secs. 84-4701 to 84-4737.

Income tax, secs. 84-4901 to 84-4958.

Levy of taxes, secs. 84-3801 to 84-3810.

84-6702. Montana compact commissioner—director of revenue. The director of the state department of revenue shall represent this state on the multistate tax commission.

History: En. Sec. 2, Ch. 17, L. 1969; amd. Sec. 118, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "director of the state department of revenue" for "chairman of the state board of equalization."

84-6703. Alternate. The member representing this state on the multistate tax commission may be represented thereon by an alternate designated by him.

History: En. Sec. 3, Ch. 17, L. 1969; amd. Sec. 119, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "who must be a member of the state board of equalization" from the end of the section.

Repealing Clause

Section 120 of Ch. 405, Laws 1973 read "Sections 84-211, 84-429.10, 84-443, 84-444, 84-445, 84-446, 84-447, 84-453, 84-502, 84-503, 84-4732, 84-4733, 84-4734, and 84-4735, R. C. M. 1947, are repealed."

84-6704. Advisory committee — members — reimbursement — meetings. There is hereby established the multistate tax compact advisory committee composed of the member of the multistate tax commission rep-

resenting this state or any alternate designated by him, the attorney general or his designee, and two members of the senate, one from each of the two major political parties appointed by the senate committee on committees, and two members of the house of representatives, one from each of the two major political parties, appointed by the speaker of the house. The chairman shall be the member of the commission representing this state. Members of the commission who are members of the legislature shall be reimbursed for travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended, incurred on commission business from any funds appropriated to implement this compact. The committee shall meet on the call of its chairman or at the request of a majority of its members, but in any event it shall meet not less than three times in each year. The committee may consider all matters relating to recommendations of the multistate tax commission and the activities of the members in representing this state thereon.

History: En. Sec. 4, Ch. 17, L. 1969; amd. Sec. 27, Ch. 453, L. 1977.

Amendments

The 1977 amendment substituted "travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended" in the third sentence for "actual and necessary expenses"; and made minor changes in phraseology and style.

Cross-References

Advisory committee abolished, sec. 82A-1806.

Board of equalization to appoint advisory council, sec. 82A-1803(2).

CHAPTER 68—TOBACCO TAX (CIGARETTES EXCLUDED)

Section
84-6801. Definitions.
84-6802. Direct tax on retail customer—advance payment—notice in seller's premises—amount of tax—products excepted.
84-6803. Wholesaler to precollect and pay tax.
84-6804. Wholesaler's sale without prepayment a misdemeanor—injunctive penalty.
84-6805. Unlawful sales and offers to sell—penalty.
84-6806. Wholesaler to retain five per cent defrayment—refunds.
84-6807. Rule-making power.

84-6801. Definitions. As used in this act, the following definitions shall apply unless the context otherwise requires:

(1) The word "department" shall mean the state department of revenue of the state of Montana.

(2) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization or association, however formed.

(3) The word "cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(4) The words "sale" or "sell" shall mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatever of tobacco products, other than cigarettes.

(5) The word "wholesaler" shall mean any person who purchases tobacco products, other than cigarettes, directly from the manufacturer, or

who purchases tobacco products, other than cigarettes, from any other person who purchases from the manufacturer, and who acquires such products for the purpose of bona fide sales to retail dealers, or who services retail outlets by the maintenance of an established place of business for the purchase of tobacco products, other than cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of tobacco products. The word "retailer" shall mean any person other than a wholesaler who is engaged in the business of selling tobacco products to the ultimate consumer.

(6) The words "wholesale price" shall mean the established price for which a manufacturer sells a tobacco product, other than cigarettes, to a wholesaler or unclassified acquirer before any discount or other reduction.

History: En. Sec. 1, Ch. 12, Ex. L. 1969; amd. Sec. 252, Ch. 516, L. 1973.

Title of Act

An act providing for the imposition of a tax on the sale of all tobacco products, not including cigarettes.

Amendments

The 1973 amendment substituted subdivision (1) for a subdivision defining "board" as the state board of equalization.

84-6802. Direct tax on retail customer—advance payment—notice in seller's premises—amount of tax—products excepted. (1) All taxes paid pursuant to the provisions of this section shall be exclusively presumed to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person such payment shall be considered as an advance payment and shall be added to the price of tobacco products, other than cigarettes, and recovered from the ultimate consumer or user. Any person selling tobacco products, other than cigarettes, at retail shall state or separately display in the premises where such products are sold, a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section shall in no way affect the method of collection of such tax as hereinafter provided.

(2) There is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon tobacco products, other than cigarettes, sold or possessed in this state, a tax of twelve and one-half per cent (12-½%) of the wholesale price of such products to the wholesaler, excepting therefrom such said products as may be shipped from Montana and destined for retail sale and consumption outside the state of Montana.

History: En. Sec. 2, Ch. 12, Ex. L. 1969.

84-6803. Wholesaler to precollect and pay tax. The tax imposed shall be precollected and paid by the wholesaler to the board prior to the sale of tobacco products, other than cigarettes, to the purchaser from the wholesaler.

History: En. Sec. 3, Ch. 12, Ex. L. 1969.

84-6804. Wholesaler's sale without prepayment a misdemeanor—injunctive penalty. Any wholesaler who shall sell any tobacco products, other than cigarettes, without first making payment of the tax provided

for by this act in the manner and at the time specified shall be guilty of a misdemeanor, and further shall be enjoined by an action pursued in the district court of the county of Lewis and Clark, Montana from making further sale of tobacco products, other than cigarettes, for a period not less than one (1) month nor more than one (1) year.

History: En. Sec. 4, Ch. 12, Ex. L. 1969.

84-6805. Unlawful sales and offers to sell—penalty. It shall be unlawful for any person, individual, firm or corporation to sell or offer to sell any tobacco products subject to this tax without the tax having been prepaid as provided for in this act. Violation of this section shall constitute a misdemeanor punishable by a fine of not more than five hundred dollars ($500) or imprisonment for not more than six (6) months.

History: En. Sec. 5, Ch. 12, Ex. L. 1969.

84-6806. Wholesaler to retain five per cent defrayment—refunds. The taxes specified in this act that are paid by the wholesaler, shall be paid to the department in full less a five per cent (5%) defrayment for his collection and administrative expense and shall be deposited by the department in the long-range building sinking fund number 338766. Refunds of the tax paid shall be made as provided in section 84-726, R. C. M. 1947, in cases where the tobacco products purchased become unsalable.

History: En. Sec. 6, Ch. 12, Ex. L. 1969; amd. Sec. 253, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

84-6807. Rule-making power. The department is authorized to adopt rules for the effective collection and refund of the tax imposed by this act.

History: En. Sec. 7, Ch. 12, Ex. L. 1969; amd. Sec. 254, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board."

CHAPTER 69—CORPORATION INCOME TAX

Section
84-6901. Application of license and income taxes.
84-6902. Short title—administration of act.
84-6903. Rate of tax imposed—income from sources within state defined—alternative tax.
84-6904. Offset for license taxes—income tax collected considered license tax.
84-6905. Information return—period for assessment of tax.
84-6906. License tax sections incorporated by reference.
84-6907. Employment of personnel—rules and regulations.
84-6908. Disposition of revenue.
84-6909. Closing agreements.

84-6901. Application of license and income taxes. It is the intent of the legislative assembly that the corporation license tax shall be applied to all corporations subject to taxation under chapter 15, Title 84, R. C. M. 1947. The income tax provided by this act shall be applied to corporations that are not taxable under chapter 15, Title 84, R. C. M. 1947, but are taxable under an income tax.

History: En. Sec. 1, Ch. 82, L. 1971.

Title of Act

An act to subject corporations to an income tax if they are not subject to the corporation license tax; and providing an effective date.

Cross-References

Corporation license tax, sec. 84-1501 et seq.

Industrial income tax, sec. 84-4901 et seq.

Multistate tax compact, sec. 84-6701.

84-6902. Short title—administration of act. This act shall be known as and may be cited as the "Corporation Income Tax" and it shall be administered by the state department of revenue.

History: En. Sec. 2, Ch. 82, L. 1971; amd. Sec. 255, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

84-6903. Rate of tax imposed—income from sources within state defined—alternative tax. (1) There is hereby imposed upon every corporation for each taxable year an income tax at the rate specified in 84-1501 upon its net income derived from sources within this state for taxable years beginning after December 31, 1970, other than income for any period for which the corporation is subject to taxation under Title 84, chapter 15, according to or measured by its net income.

(2) Income from sources within this state includes income from tangible or intangible property located in or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce, but does not include interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located within the state if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(3) Pursuant to Article III, section 2, of the Multistate Tax Compact (Title 84, chapter 67), any corporation required to file a return under this act and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana does not exceed $100,000 may elect to pay a tax of ½ of 1% of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to Article IV, sections 16 and 17, of the Multistate Tax Compact.

History: En. Sec. 3, Ch. 82, L. 1971; amd. Sec. 1, Ch. 367, L. 1973; amd. Sec. 1, Ch. 247, L. 1977.

Amendments

The 1973 amendment added subsection (3).

The 1977 amendment added "but does not include interest paid on loans * * * except periodic inspection of the security" to the end of subsection (2); and made minor changes in phraseology, punctuation and style.

Application

Section 2 of Ch. 247, Laws 1977 read "The amendments made in section 1 apply to taxable years ending after September 12, 1976."

84-6904. Offset for license taxes—income tax collected considered license tax. There shall be offset against the corporation income tax imposed for any period the amount of any tax imposed against it for the same period under chapter 15, Title 84, R. C. M. 1947. In the event that taxes, interest and penalties have been or will be assessed against, paid by or collected from a corporation under this chapter, which assessment, payment or collection should have been made under chapter 15, Title 84, R. C. M. 1947, such taxes, interest and penalties shall be considered as having been assessed, paid or collected under chapter 15, Title 84, R. C. M. 1947, as of the date they were made.

History: En. Sec. 4, Ch. 82, L. 1971.

84-6905. Information return—period for assessment of tax. When a corporation formerly subject to tax under chapter 15, Title 84, R. C. M. 1947, becomes subject to tax under this act, it shall file an information return for the income year in which the change occurs. The tax for the year in which the change occurs will be assessed under chapter 15, Title 84, R. C. M. 1947, and not under this act. For years subsequent to the year in which the change occurs, the tax will be assessed under this act.

History: En. Sec. 5, Ch. 82, L. 1971.

84-6906. License tax sections incorporated by reference. The provisions of the following sections of chapter 15, Title 84, R. C. M. 1947, are incorporated into this act by reference and made a part hereof.

(1) That part of section 84-1501, R. C. M. 1947, which defines the term "corporation" and that part which specifies the classes of organizations whose income shall not be taxed.

(2) Sections 84-1501.4, 84-1502, 84-1503, 84-1504, 84-1505, 84-1505.1, 84-1506, 84-1507, 84-1508, 84-1508.1, 84-1508.2, 84-1509, 84-1510, 84-1512, 84-1513, 84-1516, 84-1517, and 84-1518, R. C. M. 1947, except that the term "gross income" shall be construed as excluding the net amount of interest income from valid obligations of the United States and except that wherever the words "tax," "license tax," "license fee," "corporation excise tax," or like words appear, referring to the tax imposed under chapter 15, Title 84, R. C. M. 1947, there shall be substituted the words "income tax."

History: En. Sec. 6, Ch. 82, L. 1971.

Compiler's Notes

Section 84-1501.4, referred to in subdivision (2) and exempting state banks from taxation, was repealed by Sec. 2, Ch. 23, Laws 1971. Banks are now subject to taxation under sec. 84-1501.6.

84-6907. Employment of personnel—rules and regulations. The state department of revenue may employ personnel and adopt rules, regulations and forms as the department finds necessary to place this act in operation and to carry out its provisions.

History: En. Sec. 7, Ch. 82, L. 1971; amd. Sec. 256, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in two places.

84-6908. Disposition of revenue. The net revenue from the tax imposed by this act shall be disposed of in the same manner as revenue from the corporation license tax as provided in section 84-1901, R. C. M. 1947.

History: En. Sec. 8, Ch. 82, L. 1971.

Effective Date

Section 9 of Ch. 82, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

84-6909. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any person relating to the liability of such person in respect to the tax imposed by this chapter for any taxable period.

(2) Any such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded.

History: En. 84-6909 by Sec. 3, Ch. 353, L. 1977.

CHAPTER 70—RESOURCE INDEMNITY TRUST ACCOUNT

Section
84-7001. Short title.
84-7002. Legislative policy.
84-7003. Definitions.
84-7004. Creation of account in trust and legacy fund.
84-7005. Gross yield from mines to be reported—form—contents.
84-7006. Tax on mineral production.
84-7007. Payment of tax.
84-7008. Receipt for tax—disposition of funds.
84-7009. Investment of resource indemnity trust account—expenditures—minimum balance.
84-7010. Purpose of fund usage.
84-7011. Effective date of tax.
84-7012. Procedure in case of failure to file statement—penalty—interest—tax lien.
84-7013. Restricted access to records.

84-7001. Short title. This act shall be known and may be cited as "The Montana Resource Indemnity Trust Act."

History: En. 84-7001 by Sec. 1, Ch. 497, L. 1973.

Title of Act

An act to create the resource indemnity trust account in the trust and legacy fund and to provide for the funding of the account by imposing a tax on the gross value of product of all nonrenewable resource extracting industries.

84-7002. Legislative policy. It is the policy of this state to provide security against loss or damage to our environment from the extraction of nonrenewable natural resources. Recognizing that the total environment consists of our air, water, soil, flora, fauna, and also of those social, economic, and cultural conditions that influence our communities and the lives of our individual citizens, it is necessary that this state be indemnified

for the extraction of those resources. Therefore, it is the purpose of this chapter to provide for the creation of a resource indemnity trust in order that the people and resources of Montana may long endure.

History: En. 84-7002 by Sec. 2, Ch. 497, L. 1973.

84-7003. Definitions. As used in this act:

(1) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(2) "Gross value of product" means the market value of any merchantable mineral extracted or produced during the taxable year.

(3) "Total environment" means air, water, soil, flora, and fauna and the social, economic, and cultural conditions that influence communities and individual citizens.

(4) "Department" means department of revenue.

History: En. 84-7003 by Sec. 3, Ch. 497, L. 1973; amd. Sec. 23, Ch. 52, L. 1977.

Amendments

The 1977 amendment deleted a former subdivision (1) which read "'Person' means and includes every individual, partnership, firm, association, joint stock company, syndicate and corporation"; redesignated former subdivisions (2) through (5) as subdivisions (1) through (4); and made minor changes in phraseology and punctuation.

Repealing Clause

Section 24 of Ch. 52, Laws 1977 read "Sections 84-1101, 84-1201, 84-2001, 84-2201, and 84-5901, R. C. M. 1947, are repealed."

84-7004. Creation of account in trust and legacy fund. For the purpose of carrying out this act there is a resource indemnity trust account in the trust and legacy fund. The resource indemnity account shall be credited with all moneys received as herein provided.

History: En. 84-7004 by Sec. 4, Ch. 497, L. 1973.

84-7005. Gross yield from mines to be reported—form—contents. A person who engages in or carries on the business of mining, extracting, or producing a mineral from any quartz vein or lode, placer claim, dump or tailings, or other place or source, shall on or before March 31 of each year make out a statement of gross yield of the mineral from each mine owned or worked by that person during the year preceding January 1 of the year in which the statement is made, and the value thereof. This form shall be in the form prescribed by the department, and shall be verified by the oath of the person, or the manager, superintendent, agent, president, or vice-president of the corporation, association, or partnership, if any, and shall be delivered to the department on or before March 31. The statement shall show the following:

(1) The name and address of the owner or lessee or operator of the mine.

(2) The description and location of the mine.

(3) The quantity of minerals extracted, produced, and treated or sold from the mine during the period covered by the statement.

(4) The amount and character of the mineral and the total yield of the mineral from the mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas or other commercially valuable constituents of the ores or mineral products or deposits measured by standard units of measurement, yielded to the person engaged in mining.

(5) The gross yield or value in dollars and cents.

History: En. 84-7005 by Sec. 5, Ch. 497, L. 1973.

84-7006. Tax on mineral production. The annual tax to be paid by the person engaged in or carrying on the business of mining, extracting, or producing a mineral shall be $25, together with an additional sum or amount computed on the gross value of product which may have been derived from the business work or operation within this state during the calendar year immediately preceding, at the rate of ½ of 1% of the amount of gross value of product at the time of extraction from the ground, if in excess of $5,000. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners may be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

History: En. 84-7006 by Sec. 6, Ch. 497, L. 1973; amd. Sec. 1, Ch. 495, L. 1977.

Amendments

The 1977 amendment added the second sentence; and made minor changes in style.

84-7007. Payment of tax. The tax imposed by this act shall be paid by each person to which the tax applies on or before March 31 on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax shall be paid to the department at the time that the statement of yield is filed with the department.

History: En. 84-7007 by Sec. 7, Ch. 497, L. 1973.

84-7008. Receipt for tax—disposition of funds. The department shall issue a receipt for the tax and promptly turn the tax over to the state treasurer for deposit in the resource indemnity trust account of the trust and legacy fund.

History: En. 84-7008 by Sec. 8, Ch. 497, L. 1973.

84-7009. Investment of resource indemnity trust account—expenditures—minimum balance. All moneys paid into the resource indemnity trust account shall be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust account shall annually be added thereto until it has reached the sum of ten million dollars ($10,000,000). Thereafter only the net earnings may be appropriated and expended until the account reaches one hundred million dollars ($100,000,000). Thereafter all net earnings and all receipts shall be appro-

priated by the legislature and expended provided that the balance in the account may never be less than one hundred million dollars ($100,000,000).

History: En. 84-7009 by Sec. 9, Ch. 497, L. 1973.

84-7010. Purpose of fund usage. Any funds made available under this act shall be used and expended to improve the total environment and rectify damage thereto.

History: En. 84-7010 by Sec. 10, Ch. 497, L. 1973.

84-7011. Effective date of tax. The tax imposed by this act shall be first imposed for the whole calendar year 1973, and shall be based on the statement of yield prescribed in section 84-7005.

History: En. 84-7011 by Sec. 11, Ch. 497, L. 1973.

84-7012. Procedure in case of failure to file statement—penalty—interest—tax lien. (1) If any person fails, refuses, or neglects to make and file a statement and return it within the time prescribed, the department shall, immediately after such time has expired, determine, as nearly as may be possible from any returns or reports filed with the state or from any other information which the department may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the tax is to be paid, and shall fix the amount of the tax due to the state from such person for such calendar year and shall add to the amount of such tax a penalty of 10% thereof plus interest at the rate of 1% a month or fraction thereof computed on the total amount of tax and penalty. Interest shall be computed from the date the tax was due to the date of payment.

(2) The department shall mail to the person required to file an annual statement and pay any tax a letter setting forth the amount of tax, penalty, and interest due. Upon receipt of this letter, the person shall remit to the department the full amount of license tax, penalty, and interest due within 15 days.

(3) The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 84-7005 is provided to the department.

(4) The tax assessed against any person under this act, together with penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state, which lien shall attach on the date the department files in the office of the county clerk in the county where such property is situated a certified copy of its letter sent under subsection (2). This lien shall have precedence over any other claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

History: En. 84-7012 by Sec. 12, Ch. 497, L. 1973; amd. Sec. 1, Ch. 301, L. 1975; amd. Sec. 11, Ch. 156, L. 1977.

Amendments

The 1975 amendment designated the first paragraph as subsection (1); substituted

"and shall determine and fix the amount of the tax due to the state from such person" in the first sentence in subsection (1) for "and shall make and file a statement showing the amount of such gross value of product and shall ascertain and determine and compute and assess the amount of the tax due from, and to be paid by such person"; added "for such calendar year * * * amount of tax and penalty" to the end of the first sentence of subsection (1); added the second sentence of subsection (1); and added subsections (2) to (4).

The 1977 amendment substituted the provision in subsection (4) establishing the date on which a lien attaches for a former provision that it attached "on the date the state department of revenue files a duplicate of the statement so made by the department in the office of the county clerk in the county where such property is situated"; and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 12 of Ch. 156, Laws 1977 read "Section 84-2011, R. C. M. 1947, is repealed."

84-7013. Restricted access to records. The information furnished by the producer to the department of revenue for the purpose of this act shall be treated as provided in section 84-1507, R. C. M. 1947.

History: En. Sec. 13, Ch. 497, L. 1973.

CHAPTER 71—STATE DEBT COLLECTION SERVICE

Section
84-7101. Department of revenue authorized to establish debt collection service.
84-7102. Definitions.
84-7103. Department may assist in debt collection.
84-7104. Circumstances where department must assist.
84-7105. Authority of department to collect debt.
84-7106. Agency owed debt to receive all moneys collected.
84-7107. Write-off procedures.
84-7108. Circumstances under which previously written off debt may be collected.
84-7109. Debts not collectible under this act.
84-7110. State agencies to adopt rules to conform to act.
84-7111. Right of hearing to aggrieved persons.

84-7101. Department of revenue authorized to establish debt collection service. The department of revenue is hereby authorized to provide a collection service for the general purpose of centralizing the collection of all debts owing to the state of Montana.

History: En. 84-7101 by Sec. 1, Ch. 118, L. 1974.

Title of Act

An act authorizing a collection service in the Montana department of revenue for the purpose of centralizing the collection of all debts owing to the state of Montana.

84-7102. Definitions. In this act:

(1) The term "state agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) The word "department" means the state department of revenue.

History: En. 84-7102 by Sec. 2, Ch. 118, L. 1974.

84-7103. Department may assist in debt collection. The department may assist in the collection of any delinquent account owing to any state agency.

History: En. 84-7103 by Sec. 3, Ch. 118, L. 1974.

84-7104. Circumstances where department must assist. Subject to and in accordance with rules adopted by the department, the department shall render assistance in the collection of accounts owing to any state agency if all of the following procedures have been completed to the satisfaction of the department:

(1) A state agency must make all reasonable efforts to collect money owed to it and must determine that the money and any interest or penalties therefor are uncollectible in accordance with criteria for uncollectibility formulated by that agency.

(2) Once a state agency has determined an account owed to it uncollectible, it shall certify to the department the amount of the money, interest, and penalties, as accurately as can be determined. The department may require submission by the agency of all relevant evidence and other information regarding the debt and may examine the records of any other state agency which may be pertinent in determining the uncollectibility of the debt unless examination is specifically prohibited by law.

(3) If the department finds that the debt is uncollectible in accordance with the criteria for uncollectibility of money due that state agency, the department shall direct the agency to write off the debt on its accounts and transfer the debt to the department.

History: En. 84-7104 by Sec. 4, Ch. 118, L. 1974; amd. Sec. 1, Ch. 248, L. 1977.

Amendments

The 1977 amendment deleted "and regulations" after "rules" near the beginning of the introductory paragraph; substituted "transfer" near the end of subsection (3) for "assign"; and made minor changes in punctuation.

84-7105. Authority of department to collect debt. Once a debt of a state agency has been transferred to the department of revenue, the department shall have the authority to collect it, including the power to offset tax refunds due to individuals against the debt transferred by the state agency to the department of revenue, provided the department may not exercise this right of offset until the debtor has first been notified by the department and given an opportunity for a hearing. The department of revenue may contract with commercial collection agencies for recovery of debts owed the state of Montana by debtors residing outside the boundaries of the state of Montana.

History: En. 84-7105 by Sec. 5, Ch. 118, L. 1974; amd. Sec. 2, Ch. 248, L. 1977.

Amendments

The 1977 amendment substituted "transferred" twice in the first sentence for "assigned"; and added the second sentence.

84-7106. Agency owed debt to receive all moneys collected. All moneys collected by the department of revenue on debts transferred to it by the various state agencies shall be deposited to the account or fund of the agency to which the debt was originally owing.

History: En. 84-7106 by Sec. 6, Ch. 118, L. 1974; amd. Sec. 3, Ch. 248, L. 1977.

Amendments

The 1977 amendment substituted "transferred" for "assigned."

84-7107. Write-off procedures. The department may establish procedures for canceling and writing off accounts receivable carried on the books of the various state agencies, which have been transferred to the department of revenue pursuant to 84-7104, and which are uncollectible or the continued pursuance of the collection thereof would cost the state more than the amount collected. Such procedures shall be established in accordance with 82-110.

History: En. 84-7107 by Sec. 7, Ch. 118, L. 1974; amd. Sec. 4, Ch. 248, L. 1977.

Amendments

The 1977 amendment substituted "transferred" for "assigned" in the first sentence; and made minor changes in phraseology, punctuation and style.

84-7108. Circumstances under which previously written off debt may be collected. If a debt previously written off under section 84-7107 subsequently becomes collectible, the department shall proceed to collect the money due pursuant to sections 84-7105 and 84-7106.

History: En. 84-7108 by Sec. 8, Ch. 118, L. 1974.

84-7109. Debts not collectible under this act. This act does not apply to unliquidated debts and to debts owed to a state agency for which a procedure for compromise, release, discharge, waiver, cancellation or other form of settlement thereof for reasons other than uncollectibility is by law made specifically applicable to such state agency.

History: En. 84-7109 by Sec. 9, Ch. 118, L. 1974.

84-7110. State agencies to adopt rules to conform to act. All state agencies shall adopt rules, regulations and forms to participate in and carry out the provisions of this act.

History: En. 84-7110 by Sec. 10, Ch. 118, L. 1974.

84-7111. Right of hearing to aggrieved persons. Any person aggrieved from a decision or an action taken under this act shall have the right to present his grievances in the same manner as provided by law for taxpayer appeals.

History: En. 84-7111 by Sec. 11, Ch. 118, L. 1974.

CHAPTER 72—PROPERTY TAXPAYERS INFORMATION ACT

Section

84-7201. Short title.
84-7202. Certification of taxable values and millage rates.
84-7203. Increase of tax revenue—advertising of intention required.
84-7204. Resolution or ordinance for increase over certified millage.
84-7205. Approval and copies of resolution or ordinance.
84-7206. Exceptions for decisions of tax appeal boards.
84-7207. Additional millage increase—readvertising and revoting.
84-7208. Increase over legal maximum not authorized—reductions permitted.

84-7201. Short title. This act may be cited as the Property Taxpayers Information Act of 1974.

History: En. 84-7201 by Sec. 1, Ch. 286, L. 1974.

Title of Act

An act to require taxing authorities to hold hearings prior to increasing property taxation rates; requiring the department of revenue to certify total valuations and millage rates to taxing authorities; and providing an effective date.

84-7202. Certification of taxable values and millage rates. At the time that the assessment roll is prepared and published, the department of revenue shall certify to each taxing authority the taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll, and the value of deletions from the previous assessment roll. Exclusive of such new construction, improvements, and deletions the department shall certify to each taxing authority a millage rate which will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use ninety-five per cent (95%) of the taxable value appearing on the roll, exclusive of properties appearing for the first time on the assessment roll.

History: En. 84-7202 by Sec. 2, Ch. 286, L. 1974.

84-7203. Increase of tax revenue—advertising of intention required. No taxing authority shall budget an increased amount of ad valorem tax revenue exclusive of revenue from ad valorem taxation on properties appearing for the first time on the assessment roll, unless it advertises its intention to do so at the same time that it advertises its intention to fix its budget for the forthcoming fiscal year.

History: En. 84-7203 by Sec. 3, Ch. 286, L. 1974.

84-7204. Resolution or ordinance for increase over certified millage. No millage in excess of the department's certified millage shall be levied until a resolution or ordinance has been approved by the governing board of the taxing authority, which resolution or ordinances must be approved by said taxing authority according to the following procedure:

(1) The taxing authority shall advertise its intent to exceed the department's certified millage in a newspaper of general circulation in the county, as provided in section 3 [84-7203] of this act. The advertisement shall state that the taxing authority will meet on a day, at a time and place fixed in the advertisement, which shall be approximately seven (7) days after the day that the advertisement is published, for the purpose of hearing comments regarding the proposed increase and to explain the reasons for the proposed increase. The meeting may coincide with the meeting on the tentative budget as required by law.

(2) The taxing authority, after the public hearing has been held in accordance with the above procedures, may adopt a resolution or ordinance levying a millage rate in excess of the certified millage. If

the resolution or ordinance adopting said millage rate is not approved on the day of the public hearing, the day, time and place at which the resolution or ordinance will be scheduled for consideration and approval by the taxing authority must be announced at the public hearing. If the resolution or ordinance is to be considered at a day and time that is more than two (2) weeks from the public hearing, the taxing authority must again advertise in the same manner as provided in sections 3 [84-7203] and 4(1) [84-7204(1)] of this act.

(3) Public notice given and public hearings held in compliance with the requirements of Title 75, chapter 67, in setting school budgets satisfy the requirements contained in this section.

History: En. 84-7204 by Sec. 4, Ch. 286, L. 1974; amd. Sec. 2, Ch. 354, L. 1977.

Amendments

The 1977 amendment added subdivision (3).

84-7205. Approval and copies of resolution or ordinance. The resolution or ordinance approved in the manner provided for in this act shall be forwarded to the assessor, treasurer and the department of revenue. No millage in excess of the department's certified millage can be levied until the resolution or ordinance to levy required in section 4(1) and (2) [84-7204(1) and (2)] of this act is approved by the governing board of the taxing authority and submitted to the assessor and the department of revenue.

History: En. 84-7205 by Sec. 5, Ch. 286, L. 1974.

84-7206. Exceptions for decisions of tax appeal boards. The department shall notify each taxing authority of any change in the assessment roll which results from actions by the state or county tax appeal boards. An increase in the taxing authority's millage above that certified by the department, or adopted by resolution or ordinance of the governing body of the taxing authority, which is required solely by a reduction of the assessment roll by the state or county board of tax appeals, may be adopted without further notice.

History: En. 84-7206 by Sec. 6, Ch. 286, L. 1974.

84-7207. Additional millage increase—readvertising and revoting. If, after the initial millage vote provided for in section 3 [84-7203] of this act, the taxing authority determines that it requires a greater millage or fails to act in the specified period, it shall readvertise and revote as required in sections 3 and 4 [84-7203 and 84-7204] of this act.

History: En. 84-7207 by Sec. 7, Ch. 286, L. 1974.

84-7208. Increase over legal maximum not authorized—reductions permitted. Nothing contained in this section shall serve to extend or authorize any millage in excess of the maximum millage permitted by law nor prevent the reduction of millage.

History: En. 84-7208 by Sec. 8, Ch. 286, L. 1974.

Effective Date

Section 9 of Ch. 286, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 25, 1974.

CHAPTER 73—REALTY TRANSFER ACT

Section
84-7301. Short title.
84-7302. Purpose.
84-7303. Definitions.
84-7304. Report of transfers—change of ownership records.
84-7305. Certificate of county clerk and recorder.
84-7306. Rules.
84-7307. Certificate—exceptions.
84-7308. Disclosure of information.
84-7309. Classification or assessment methods.
84-7310. Penalty.
84-7311. Costs.

84-7301. Short title. This act may be cited as the "Realty Transfer Act."

History: En. 84-7301 by Sec. 1, Ch. 528, L. 1975.

Title of Act

An act to be known as the "Realty Transfer Act"; and providing penalties.

84-7302. Purpose. The purpose of this act is to obtain sales price data necessary to the determination of statewide levels and uniformity of real estate assessments by the most efficient, economical and reliable method.

History: En. 84-7302 by Sec. 2, Ch. 528, L. 1975.

84-7303. Definitions. As used in this act:

(1) "Transfer" means an act of the parties, or of the law, by which the title to real property is conveyed from one person to another.

(2) "Real estate" includes:

(a) land,

(b) growing timber,

(c) buildings, structures, fixtures, fences, and improvements affixed to land.

(3) "Value" means the amount of the full actual consideration therefor, paid or to be paid, including the amount of any lien or liens thereon.

(4) "Partial interest" means a percentage interest in property when less than one hundred per cent (100%).

(5) "Person" means and includes an individual, corporation, partnership or other business organization, trust, fiduciary or agent or any other party presenting a document for recordation.

History: En. 84-7303 by Sec. 3, Ch. 528, L. 1975.

84-7304. Report of transfers—change of ownership records. (1) All transfers of real property, which are not evidenced by a recorded docu-

ment, except those transfers otherwise provided for in this act, shall be reported to the department of revenue or its agent on the form prescribed.

(2) No agent of the department of revenue may change or be required to change any ownership records used for the assessment or taxation of real property, unless he has received a transfer certificate from the clerk and recorder or a transfer has been reported to him.

History: En. 84-7304 by Sec. 4, Ch. 528, L. 1975.

84-7305. Certificate of county clerk and recorder. (1) The county clerk and recorder shall cause to be executed by the parties to the transaction or their agents or representatives a certificate declaring the consideration paid or to be paid for the real estate transferred.

(2) No instrument or deed evidencing a transfer of real estate may be accepted for recordation until the certificate provided in this act has been received by the county clerk and recorder. The validity or effectiveness of an instrument or deed as between the parties to it shall not be affected by the failure to comply with the provisions in this act.

(3) The form of certificate shall be prescribed by the state department of revenue and the department shall provide an adequate supply of such forms to each county clerk and recorder in the state.

(4) The county clerk and recorder shall prepare a like certificate for each contract for deed filed for recording.

(5) The county clerk and recorder shall transmit each executed certificate to the state department of revenue.

History: En. 84-7305 by Sec. 5, Ch. 528, L. 1975.

84-7306. Rules. The state department of revenue may prescribe such rules as are reasonably necessary to facilitate and expedite the provisions and administration of this act.

History: En. 84-7306 by Sec. 6, Ch. 528, L. 1975.

84-7307. Certificate—exceptions. The certificate imposed by this act shall not apply:

(1) to an instrument recorded prior to the effective date of this act;

(2) to the sale of agricultural land when the land is used for agricultural purposes;

(3) to the United States of America, this state, or any instrumentality, agency, or subdivision thereof;

(4) to an instrument which (without added consideration) confirms, corrects, modifies or supplements a previously recorded instrument;

(5) to a transfer pursuant to court decree;

(6) to a transfer pursuant to mergers, consolidations or reorganizations of corporations, partnerships, or other business entities;

(7) to a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;

(8) to a transfer of decedents' estates;

(9) to a transfer of a gift;

(10) to a transfer between husband and wife, or parent and child with only nominal actual consideration therefor;

(11) to an instrument the effect of which is to transfer the property to the same party or parties;

(12) to a sale for delinquent taxes or assessments, sheriff sale, bankruptcy action or mortgage foreclosure;

(13) to a transfer made in contemplation of death.

History: En. 84-7307 by Sec. 7, Ch. 528, L. 1975.

84-7308. Disclosure of information. The certificate required by this act and the information therein shall not be a public record and shall be held confidential by the county clerk and recorder, county assessor, and department of revenue. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The foregoing provisions shall not apply to compilations from such certificates, or to summaries, analyses, and evaluations based upon such compilations.

History: En. 84-7308 by Sec. 8, Ch. 528, L. 1975.

84-7309. Classification or assessment methods. (1) This act shall not change or modify the methods of classification or assessment of real estate as provided for in Title 84, R. C. M. 1947, or in any law of this state.

(2) The sale price of real estate shall not be the sole determinant of assessed value. The department shall consider, wherein the consideration is to be paid in deferred installments over a period of ten (10) years or more, the terms of the contract, amount of down payment, amount of each installment, rate of interest, and other covenants or exceptional circumstances which may affect the consideration paid for real estate.

History: En. 84-7309 by Sec. 9, Ch. 528, L. 1975.

84-7310. Penalty. A person convicted of violating any provision of this act shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months or both.

History: En. 84-7310 by Sec. 12, Ch. 528, L. 1975.

84-7311. Costs. Notwithstanding section 43-517, the duties, obligations, or responsibilities imposed on local government entities by this act are such that related costs are incurred as a part of their normal operating procedures.

History: En. 84-7311 by Sec. 10, Ch. 528, L. 1975.

Separability Clause

Section 11 of Ch. 528, Laws 1975 read "If a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 74—ENERGY CONSERVATION AND ALTERNATIVE ENERGY SOURCES—INCENTIVE PROGRAMS

Section
84-7401. Statement of purpose.
84-7402. Definitions.
84-7403. Tax treatment of certain energy-related investments.
84-7403.1. Extension of existing classifications.
84-7404. Application for special energy investment taxation.
84-7405. Capital may be lent by utilities—tax credit for interest differential.
84-7406. Limitations.
84-7407. Purpose.
84-7408. Definitions.
84-7409. Alternative energy research development and demonstration account established.
84-7410. Department—general powers.
84-7411. Applications for grants.
84-7412. Criteria for grant awards.
84-7413. Biennial report.
84-7414. Energy system tax incentive for individuals.
84-7415. Department of revenue duties.

84-7401. Statement of purpose. The purpose of this act is to encourage the use of alternative energy sources and the conservation of energy through incentive programs. Such incentives are to be made available to the energy user on a basis which requires him to take the initiative in obtaining a particular incentive. This act allows but does not require a public utility to extend credit for energy conservation investments.

History: En. 84-7401 by Sec. 1, Ch. 548, L. 1975; amd. Sec. 7, Ch. 576, L. 1977.

Title of Act

An act to encourage investment in nonfossil forms of energy generation and in energy conservation in buildings through tax incentives and capital availability, amending sections 84-202 and 84-301, R. C. M. 1947.

Amendments

The 1977 amendment deleted a third sentence reading "This act is not intended to require an assessor to revalue property except upon receipt of a properly documented and approved application."

Coordination with Other Legislation

Section 8, Ch. 576, Laws of 1977 read "If House Bill 70 [Ch. 566] is enacted, then in lieu of the amendments to 84-301 enacted by this act, classes fifteen and eighteen in House Bill 70 [Ch. 566] shall be further amended by deleting references to capital investments in recognized nonfossil forms of energy generation and in building for an energy conservation purpose."

84-7402. Definitions. As used in this act:

(1) "Building" means a single or multiple dwelling, including a mobile home, or a building used for commercial, industrial, or agricultural purposes, which is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building, or land, with or without improvements.

(3) "Energy conservation purpose" means one or more of the following results of an investment: reducing the waste or dissipation of energy, or reducing the amount of energy required to accomplish a given quantity of work.

(4) "Recognized nonfossil forms of energy generation" means a system for the utilization of solar heat, wind, solid wastes, or the decomposition of organic wastes, for capturing energy or converting energy sources into usable sources, for the production of electric power from solid wood wastes, and also means a small system for the utilization of water power by means of an impoundment not over twenty (20) acres in surface area.

History: En. 84-7402 by Sec. 2, Ch. 548, L. 1975.

84-7403. Tax treatment of certain energy-related investments. (1) In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 84, chapter 49, or from gross corporate income allowed in computing net income under Title 84, chapter 15, a taxpayer may deduct a portion of his expenditure for a capital investment in a building for an energy conservation purpose, in accordance with the following schedule:

If the installation or investment is made in a residential building:	If the installation or investment is made in a building not used as a residence:
100% of first $1,000 expended	100% of first $2,000 expended
50% of next $1,000 expended	50% of next $2,000 expended
20% of next $1,000 expended	20% of next $2,000 expended
10% of next $1,000 expended	10% of next $2,000 expended

This tax treatment is subject to approval of the department of an application as provided in 84-7404 and may not be claimed for so much of the expenditures and capital investments as are financed by a state, federal, or private grant for energy conservation.

History: En. 84-7403 by Sec. 3, Ch. 548, L. 1975; amd. Sec. 1, Ch. 576, L. 1977.

Amendments

The 1977 amendment rewrote the section which read: "(1) Upon application by a taxpayer, approved under section 84-7404, a capital investment by the taxpayer in a recognized nonfossil form of energy generation shall be treated by the department of revenue as:

"(a) property exempt from taxation, to the extent the appraised value of the investment does not exceed one hundred thousand dollars ($100,000), or

"(b) class seven property, as defined in sections 84-301 and 84-302, for such portion of the appraised value of the investment that exceeds one hundred thousand dollars ($100,000).

"(2) Upon application by a taxpayer, approved under section 84-7404, a capital investment in a building by the taxpayer for an energy conservation purpose shall be treated by the department of revenue as class eight property, as defined in sections 84-301 and 84-302, to the extent the appraised value of the investment does not exceed twenty percent (20%) of the appraised value of the building in which the investment is made."

84-7403.1. Extension of existing classifications. Any classification of property under the provisions of 84-7403, R.C.M. 1947, that existed prior to the effective date of this act, approved by the department of revenue before April 19, 1977, shall continue in effect until December 31, 1982. On January 1, 1983, the taxable percentage of such property shall be determined under chapter 3, Title 84, R.C.M. 1947, or that chapter as it may be recodified or amended.

History: En. Sec. 9, Ch. 576, L. 1977.

Title of Act

An act transferring the energy conservation and alternative energy tax incentives from the property tax to the income and corporation license taxes, as deductions; amending sections 84-202, 84-301, 84-1502, 84-4906, 84-7401, and 84-7403, R. C. M. 1947, and providing an effective date.

Effective Date

Section 10 of Ch. 576, Laws 1977 read "This act applies to all taxable years beginning after December 31, 1976."

84-7404. Application for special energy investment taxation. The department of revenue shall provide forms on which a taxpayer may apply for tax treatment under section 84-7403. Application shall be made to the department. The department shall approve an application which demonstrably promotes energy conservation or utilizes a recognized nonfossil form of energy generation. The department may refer an application involving energy generation to the department of natural resources and conservation for its advice, and the department of natural resources and conservation shall respond within sixty (60) days. The department may refer an application involving energy conservation to the department of administration for its advice, and the department of administration shall respond within sixty (60) days. The department of revenue may deny an application which it finds to be impractical or ineffective.

History: En. 84-7404 by Sec. 4, Ch. 548, L. 1975.

84-7405. Capital may be lent by utilities—tax credit for interest differential. (1) A public utility providing electricity or natural gas may install or pay for the installation of energy conservation materials in a dwelling. The utility may agree with the occupant of the dwelling that the occupant shall reimburse the utility for its expenditure in periodic installment payments added to the occupant's regular bill for electricity or natural gas. The utility may charge interest not exceeding the equivalent of a rate of seven per cent (7%) per year on the declining balance of the sum advanced.

(2) A public utility lending money under this section may compute the difference between interest it actually receives on such transactions and the interest which would have been received at the prevailing average interest rate for home improvement loans, as prescribed in rules made by the public service commission. The utility may apply the difference so computed as a credit against its tax liability for the electrical energy producer's license tax under section 84-1601 or for the corporation license tax under section 84-1501.

(3) The public service commission may make rules to implement this section.

History: En. 84-7405 by Sec. 5, Ch. 548, L. 1975.

84-7406. Limitations. Tax treatment under section 84-7403 is limited to:

(1) capital investments made after January 1, 1975, and

(2) persons and firms not primarily engaged in the provision of gas or electricity derived from fossil fuel extraction or conventional hydroelectric development, and

(3) a ceiling of one hundred thousand dollars ($100,000) in tax savings per year to any one person or firm.

History: En. 84-7406 by Sec. 6, Ch. 548, L. 1975.

84-7407. Purpose. The purposes of this act are to stimulate research, development, and demonstration of energy sources which are harmonious with ecological stability by virtue of being renewable, thereby to lessen that reliance on nonrenewable energy sources which conflicts with the goal of long-range ecological stability, and to provide for the funding and administration of such research, provided that demonstration or development projects funded under this act may not be used to commercially market electricity, heat energy, or energy by-products.

History: En. 84-7407 by Sec. 1, Ch. 501, L. 1975.

Title of Act

An act creating a fund for research, development and demonstration of alternative energy sources and allocating certain revenue from coal taxes to the fund; directing the department of natural resources and conservation to make grants from the fund in support of alternative energy research; providing for an alternative energy advisory committee; making appropriations; amending section 84-1309.1, R. C. M. 1947.

84-7408. Definitions. As used in this act:

(1) "Alternative renewable energy source" means a form of energy or matter, such as solar energy, wind energy, or methane from solid waste, capable of being converted into forms of energy useful to mankind, and the technology necessary to make this conversion, when the source is not exhaustible in terms of this planet and when the source or the technology are not in general commercial use.

(2) "Person" means a natural person, corporation, partnership, or other business entity, association, trust, foundation, any educational or scientific institution, or any governmental unit.

(3) "Department" means the Montana department of natural resources and conservation.

History: En. 84-7408 by Sec. 2, Ch. 501, L. 1975.

84-7409. Alternative energy research development and demonstration account established. There is within the earmarked revenue fund an alternative energy research development and demonstration account. Moneys are paid into this account under section 84-1319. The state treasurer shall draw warrants payable from this account upon order of the department.

History: En. 84-7409 by Sec. 3, Ch. 501, L. 1975.

84-7410. Department—general powers. The department may:

(1) employ a staff adequate to administer this act;

(2) retain professional consultants and advisers;

(3) adopt rules governing applications and granting of funds;

(4) consider applications for grants and award grants, subject to the availability of funds, and to the appropriation of such funds by the legislature from the alternative energy research development and demonstration funds for projects that will further the purposes of this act;

(5) appoint an alternative energy advisory committee composed of representatives of state agencies and citizen members with expertise in alternative energy matters. The appointment of any such advisory committee shall be in keeping with section 82A-110.

History: En. 84-7410 by Sec. 5, Ch. 501, L. 1975.

84-7411. Applications for grants. Any person may apply for a grant to enable him to research, develop or demonstrate alternative renewable energy sources. The department shall prescribe the form for applications. Applicants shall describe the nature of their proposed investigations, including practical applications of the possible results and time requirements.

History: En. 84-7411 by Sec. 6, Ch. 501, L. 1975.

84-7412. Criteria for grant awards. The department may award grants to applicants under section 84-7411 in accordance with the following criteria:

(1) A grant may cover a period not exceeding one (1) year, and the department may not commit itself to spending funds anticipated to be available more than one (1) year after the grant period begins. The department may give an applicant a statement of intent to renew its support of his work, subject to the availability of funds and such other conditions as the department may express.

(2) The department may give preference to projects which are also supported by grants from the federal government or other persons provided the grants are consistent with the other objectives of the department. The purpose of this preference is to use the alternative energy research development and demonstration account for matching moneys in order to support more substantial research.

(3) The department may give preference to research centers unattached to existing educational institutions where several investigators can share supporting services. However, this shall not be interpreted to prohibit the department from awarding grants to existing educational institutions.

(4) The department may give preference to research centers which make information available to individuals, small businesses, and small communities seeking the use of renewable energy sources in their homes, plants, places of business, and small communities.

(5) All information resulting from such research shall be made available to the public and shall not become the private property of or under the exclusive control of any one (1) company or person.

(6) The department is under no requirement to expend or commit available alternative energy research, development and demonstration funds

when in its judgment such expenditures or commitments would be unproductive.

History: En. 84-7412 by Sec. 7, Ch. 501, L. 1975.

84-7413. Biennial report. The department shall report its expenditures and other activities under this act to the legislature at the beginning of each regular legislative session.

History: En. 84-7413 by Sec. 8, Ch. 501, L. 1975.

Appropriation

Section 9 of Ch. 501, Laws 1975 read "There is appropriated to the department of natural resources and conservation from the alternative energy research development and demonstration account, for the purpose of publicizing tax incentives for alternative energy development and energy conservation under House Bill 663, as enacted, not to exceed fifteen thousand dollars ($15,000), for the fiscal year ending June 30, 1976, and for making grants under section 7 of this act all the remaining funds in the alternative energy research development and demonstration account for the biennium ending June 30, 1977."

84-7414. Energy system tax incentive for individuals. (1) A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 84-7402, in such taxpayer's principal dwelling prior to December 31, 1982, or who acquires title to a dwelling prior to December 31, 1982, which dwelling is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this section has never been claimed, is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of such system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first $1,000 and 2½% of the next $3,000 of the cost of such system, including installation costs, less grants received against the income tax liability imposed against such taxpayer pursuant to Title 84, chapter 49, R.C.M. 1947.

(2) The tax credit is to be deducted from the taxpayer's income tax liability for the taxable year in which the energy system was acquired by the taxpayer. If the amount of the tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount which exceeds the tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability. Notwithstanding the foregoing provision, no tax credit may be carried over for deduction after the fourth taxable year succeeding the taxable year in which the energy system was acquired.

History: En. 84-7414 by Sec. 1, Ch. 574, L. 1977.

Title of Act

An act relating to the taxation of income; providing incentives for the installation or acquisition of solar or other recognized nonfossil forms of energy generation by taxpayers by providing income tax credit for the costs of the systems; amending section 84-4906, R. C. M. 1947.

84-7415. Department of revenue duties. The department of revenue shall prescribe rules necessary to carry out the purposes of this act.

History: En. 84-7415 by Sec. 3, Ch. 574, L. 1977.

Effective Date

Section 4 of Ch. 574, Laws 1977 read "The provisions of this act apply to all taxable years commencing after December 31, 1976."

CHAPTER 75—ECONOMIC LAND DEVELOPMENT ACT

Section
84-7501. Citation.
84-7502.1. Policy.
84-7503.1. Purpose.
84-7504.1. Definitions.
84-7505.1. Operation.
84-7508.1. Land classified as residential—assessment provisions.
84-7509.1. Land classified as commercial—assessment provisions.
84-7510.1. Land classified as industrial—assessment provisions.
84-7511.1. Centralized multifamily (high density) residential developments.
84-7512.1. Planned unit development—special incentives.
84-7513.1. Remodeling of homes, buildings or structures—assessment provisions.
84-7514.1. Special conditions.
84-7515.1. Rules and regulations.
84-7516.1. Exemptions from act.
84-7517.1. Changes in boundaries.
84-7518.1. Nonconforming uses.
84-7519.1. Reappraisal by department and implementation of tax benefits and penalties.
84-7520.1. Preparation of rules.

84-7501. Citation. This act may be cited as "The Montana Economic Land Development Act."

History: En. 84-7501 by Sec. 1, Ch. 549, L. 1975.

Title of Act

An act establishing a procedure for the economic development of Montana through local governmental control, based on land growth patterns established through economic value as a supplement to zoning with economic inducements and penalties; providing authorization to local governments to develop planned development procedures; and providing standards of land usage; and providing an effective date.

84-7502. Repealed.

Repeal

Section 84-7502 (Sec. 2, Ch. 549, L. 1975), relating to land use policy, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7502.1. Policy. The legislature finds that as a state we currently face problems in development that not only cause concern for our future but also could cause cutbacks in our state's growth and proper development. Since many of these concerns are based on land use decisions, the state should develop a land use policy which will direct Montana's land use expansion through the enactment of a program establishing:

(1) local decision-making authority and control as primary factors in the determination of land use patterns;

(2) tax incentive programs for land and structures based on proper land use; providing tax benefits for proper land use and tax penalties for improper land use;

(3) a land use policy that does not impede economic progress, but which aids in the development of a program which will meet the social and economic challenges brought about through economic development;

(4) land use procedures, supplementary to zoning through a local control structure providing for continuous action, which do not conflict with Title 11, chapter 27, or Title 16, chapters 41 and 47, (or those chapters as they may be amended or recodified);

(5) in general, a system of proper land use developed by a determination of the impact on an area, beneficial or otherwise, and providing tax incentives and penalties based thereon to curb improper development patterns.

History: En. 84-7502.1 by Sec. 1, Ch. 582, L. 1977.

Title of Act

An act to revise and clarify the Montana economic land development act, repealing sections 84-7502 through 84-7526, R. C. M. 1947; enacting new sections in lieu thereof; and providing an effective date.

84-7503. Repealed.

Repeal

Section 84-7503 (Sec. 3, Ch. 549, L. 1975), relating to the purpose of this chapter, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7503.1. Purpose. Montanans are faced by a nation actively searching for timber, coal, minerals, and recreational opportunities. This act is designed to establish Montana's developmental goals in a unique way: by placing our future land development within a system controlled by taxation as well as land regulation. Specific goals are:

(1) to encourage an inward pattern of urban growth which will promote greater population density on developed land within the urban areas and correspondingly provide a greater percentage of open space through control of sprawl development;

(2) to guide industrial and commercial development in Montana;

(3) to develop a program which is controlled and directed on a local level, with the actual land use direction and classification left wherever possible to the local land owner, working within existing standards, classifications, and land use practices; and

(4) in general, to provide a directional land use policy for Montana that is based on the principles of desirable growth through the development of local control rather than regulation by preemption.

History: En. 84-7503.1 by Sec. 2, Ch. 582, L. 1977.

84-7504. Repealed.

Repeal

Section 84-7504 (Sec. 4, Ch. 549, L. 1975), relating to definitions, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7504.1. Definitions. As used in this act, the following definitions apply:

(1) "Density" means the number of dwelling units per gross acre.

(2) "Dwelling unit" means any building or portion thereof providing complete, independent, and permanent living facilities for one family.

(3) "Single family dwelling" means a detached or semiattached dwelling unit.

(4) "Multifamily dwelling" means a structure consisting of more than one dwelling unit.

(5) "Neighborhood commercial area" means a cluster of convenience retail and personal service establishments that secure their principle trade by supplying the daily needs of the population residing within a geographical district defined by local government. The location and quantity of land within the neighborhood commercial area shall be a business island not more than 4 acres in size and with no business frontage extending more than 600 feet along any street.

(6) "Planned unit development" (PUD) means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in a common ownership or use.

(7) "Regional commercial area" means land adjacent to a neighborhood commercial area that accommodates business and trade facilities that are major in nature and generally require sites in excess of 4 acres and that serve the needs of a community or region. The quantity of land within a regional commercial area may not exceed 40 acres and may not contain more than one-half mile of frontage on any given street or highway.

(8) "Corporate limits", in the case of a consolidated city-county government, means the boundaries of a class 1 or class 2 city as they existed prior to consolidation.

(9) "Governing body" means the governing authority of any city or town, or any joint city-county governing authority organized pursuant to law.

(10) "State administering agency" means the department of community affairs.

(11) "Remodeling" means expansion or reconstruction of a structure, building, or other man-made object which increases its taxable value by at least 2½%, as determined by the department of revenue or its agents.

(12) "Construction period" means a period of time beginning with the issuance of a building permit and concluding when the construction is ready for its designed use or when the county assessor determines the structure to be substantially completed. In those cases where building permits are not issued, the beginning of the period is that time determined by the governing body as the start of construction. In no case may the construction period exceed 18 months.

(13) "Zoning" means the regulation by a governing body of the use of land or structures thereon, or both, within a designated portion of the jurisdictional area of the governing body, as authorized under Title 11, chapter 27, or that chapter as it may be amended or recodified.

(14) "Central business district" means that portion of land, within the corporate limits of a city, defined and delineated by the local governing

body as forming the center of the city's financial, commercial, and professional activities.

(15) "Core area" means that portion of land, within the corporate limits of a class 1 or class 2 city, that includes the central business district and extends a minimum of one-half block beyond in all directions and a maximum of three blocks, including all streets and alleys adjacent to or within the area. The core area shall be as designated by the governing body.

(16) "Civic band" means that portion of land which extends from the core area to the corporate limits.

(17) "Value" means taxable value.

(18) "Land". For the purposes of this act, there are two main categories of land: vacant and unimproved and developed. Each of these two categories can be defined in terms of the principal use (or nonuse) made of the land:

(a) developed land—land used principally for residential, industrial, or commercial purposes. The types of land use under this category are:

(i) residential land—land used for varying concentrations of dwellings designed to meet contemporary building and living standards;

(ii) industrial land—land used for manufacturing, converting, processing, assembling, dismantling, refining, or producing, a material or product; and

(iii) commercial land—land used for business purposes principally in the provision of services or the wholesale or retail selling of goods.

(19) "Vacant unimproved land" means privately owned land in areas zoned residential or commercial that have not been developed for any use defined in the preceding subsection.

History: En. 84-7504.1 by Sec. 3, Ch. 582, L. 1977.

84-7505. Repealed.

Repeal

Section 84-7505 (Sec. 5, Ch. 549, L. 1975), relating to preparation of land use plans, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7505.1. Operation. (1) Cities shall implement the following procedure in adopting or developing provisions of this act:

(a) class 1 or 2 cities already planned and zoned shall adopt the provisions of this act which will become effective on January 1, 1978, or thereafter, if an initiative for adoption is signed by at least 15% of the registered voters of that city and a majority of those voting on the question, in a special election or in the next general election, vote for its implementation.

History: En. 84-7505.1 by Sec. 4, Ch. 582, L. 1977.

Compiler's Notes

This section contained no subsection (2) or subdivision (1)(b) as enacted.

84-7506 to 84-7508. Repealed.

Repeal

Sections 84-7506 to 84-7508 (Secs. 6 to 8, Ch. 549, L. 1975), relating to criteria for determining classification of land, elections on adoption of plans, and management of classified areas, were repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7508.1. Land classified as residential—assessment provisions. The governing body shall identify those lands within its jurisdiction whose highest and best purpose is determined to be residential. Plans for residential land shall further be incorporated according to the most desirable types of residential buildings for the land categories. These categories can be but are not limited to single family (low density), single family (high density), duplex, multifamily (low density), and multifamily (high density). All new construction of residential buildings shall receive tax benefits or penalties based on their compliance with the land use categories established by the governing body. Benefits and penalties for new construction shall apply to the land and the improvements thereon and will be in accordance with the following:

(1) If vacant unimproved land is not marketable because of local conditions, the governing body shall grant zoning variances to conform with established neighborhood patterns that will increase the marketability of such land. The governing body in accordance with 84-7517.1 may extend the 5-year period as to existing residential subdivisions in which the vacant lots are being developed by new residential construction within a reasonable time under existing economic conditions.

(2) Residential construction on land, served by municipal water, sewer, and street systems, that is within the civic band designated for that use shall be taxed at 90% of taxable value for 10 years. In the 11th and all subsequent years, the property shall be taxed at its full taxable value.

(3) New residential construction on land designated for other than residential use within the civic band shall be taxed at 125% of taxable value for 10 years. Beginning with the 11th year, the percentage shall be reduced annually by equal increments over a 10-year period until the taxable value is reached in the 20th year. In subsequent years, the property shall be taxed at 100% of taxable value.

History: En. 84-7508.1 by Sec. 5, Ch. 582, L. 1977.

84-7509. Repealed.

Repeal

Section 84-7509 (Sec. 9, Ch. 549, L. 1975), relating to subclassification of land, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7509.1. Land classified as commercial—assessment provisions. The governing body shall identify those lands within its jurisdiction whose highest and best purpose is determined to be commercial. Owners of commercial buildings under construction shall receive tax benefits or penalties based on their compliance with the land use categories established by the governing body. Benefits and penalties for new construction shall apply

to the land and the improvements thereon and will be in accordance with the following:

(1) Existing vacant unimproved land within the core area and classified as commercial shall be taxed at current taxable values for 5 years after passage of this act. If at that time the land is still vacant, 5% shall be added annually to the taxable value to a maximum of 50%. Thereafter, the land shall be taxed at 150% of taxable value until it is converted to commercial use.

(2) New commercial construction or expansion of an existing commercial enterprise within the core area on land classified as commercial may not be taxed during its construction period. In the first year after construction is completed, the property shall be taxed at 10% of its taxable value. Each year thereafter the percentage shall be increased by 10% until the taxable value is attained in the 10th year. In subsequent years, the property shall be taxed at 100% of taxable value.

(3) New commercial construction or expansion of an existing commercial enterprise within the civic band and in an area designated by the governing body as a neighborhood commercial area may not be taxed during the construction period. In the first year after construction, the property shall be taxed at 20% of its taxable value. Each year thereafter the percentage shall be increased by 20% until the taxable value is attained in the fifth year. In subsequent years, the property shall be taxed at 100% of its taxable value. New commercial construction not included in a neighborhood commercial or regional commercial area shall be taxed during the construction period. For 10 years after construction, it shall be taxed at 125% of taxable value. Beginning in the 11th year after construction, the percentage shall be decreased at a rate of 5% a year for 5 years.

(4) New commercial construction or expansion of an existing commercial enterprise within the civic band and in an area designed by the governing body as a regional commercial area may not be taxed during the construction period. In the first year after construction, the property shall be taxed at 33 1/3% of its taxable value. Each year thereafter, the percentage will be increased by 33 1/3% until the full taxable value is reached in the third year. In subsequent years, the property shall be taxed at 100% of its taxable value.

(5) New commercial construction or expansion of an existing commercial enterprise is not eligible for the tax benefits or penalties described in subsections (2) through (4) if it is developed solely or in part on land purchased or cleared through tax increment financing as provided in 11-3921.

History: En. 84-7509.1 by Sec. 6, Ch. 582, L. 1977.

84-7510. Repealed.

Repeal

Section 84-7510 (Sec. 10, Ch. 549, L. 1975), relating to subclassification of agricultural land, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7510.1. Land classified as industrial—assessment provisions. (1) The governing body shall identify those lands within its jurisdiction whose highest and best purpose is determined to be industrial. Owners of existing industrial buildings and grounds under construction or undergoing expansion that increases the taxable value of the property 10% shall receive tax benefits or penalties based on their compliance with the land use categories established by the governing body. Improvements classified as "new industrial property" under Class Seven in 84-301 or under 84-301.19 may not qualify for benefits under this section. Industrial land and buildings shall be classified as Class A, B, C, or D for purposes of new construction or expansion of existing facilities. Tax benefits and penalties for new construction or expansion shall apply to the land and the improvements thereon in accordance with these classifications, determined by the governing body based on compliance with the following environmental criteria:

(2) Construction of or expansion of industrial buildings and grounds:

(a) would not place unreasonable burden on existing public services, such as highways, schools, and police and fire protection;

(b) would have sufficient water available for foreseeable needs;

(c) would meet existing air and water pollution requirements or that through reclamation the natural environment could be returned substantially to its original condition;

(d) would have adequate sewage and solid waste disposal facilities.

(3) Classes A, B, C, and D shall be determined and taxed as follows:

Class A—complies with criteria (2)(a) through (2)(d).

Class B—complies with criteria (2)(c) through (2)(d).

Class C—complies with criteria (2)(b) and (2)(d).

Class D—other than class A, B, or C.

LAND CLASSIFICATION	INDUSTRIAL CLASSIFICATION			
	CLASS A	CLASS B	CLASS C	CLASS D
Residential	+ 50%	+100%	+150%	+200%
Commercial	— 25%	— 15%	—0—	+ 50%
Industrial	— 50%	— 30%	— 10%	+ 25%

The percentages above reflect the amount in addition (+) to the taxable value or less than (—) the taxable value. These percentages of taxable value shall be continuously applied to the land and the buildings for 10 consecutive years following their construction. The construction period may not be taxed for new industrial construction or expansion of an existing industry, except as provided in 84-7509.1(3) and (5). Beginning with the 11th year following construction, the percentage of taxable value shall be adjusted in equal increments until taxable value is attained in the 20th year. Thereafter, the property shall be taxed at 100% of taxable value.

History: En. 84-7510.1 by Sec. 7, Ch. 582, L. 1977.

84-7511. Repealed.

Repeal

Section 84-7511 (Sec. 11, Ch. 549, L. 1975), relating to subclassification of recreational land, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7511.1. Centralized multifamily (high density) residential developments. New or expanded multifamily (high density) residential developments within the central business district or an area designated by the governing body or that is within the core area or within 1,000 feet of a designated neighborhood commercial area may not be taxed during the construction period. After construction is completed, the property shall be taxed at 50% of its taxable value for a period of 10 years. Each year thereafter, the percentage of taxable value shall be increased by 10% until the taxable value is attained in the 15th year. In subsequent years, the property shall be taxed at 100% of its taxable value.

History: En. 84-7511.1 by Sec. 8, Ch. 582, L. 1977.

84-7512. Repealed.

Repeal

Section 84-7512 (Sec. 12, Ch. 549, L. 1975), relating to valuation of residential land, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7512.1. Planned unit development—special incentives. Planned unit developments approved by the governing body shall receive tax incentives as follows:

(1) Construction of industrial, commercial or residential facilities which conform to the PUD may not be taxed during the construction period.

(2) If the PUD is within the civic band, the property shall be taxed at 75% of its taxable value for 10 years following construction. Beginning with the 11th year following construction, the percentage of taxable value shall be adjusted in equal increments until taxable value is attained in the 20th year. Thereafter, the property shall be taxed at 100% of its taxable value.

(3) The provisions of this section are unique and apart from other provisions in this act and shall apply whenever the conditions of a PUD are met.

History: En. 84-7512.1 by Sec. 9, Ch. 582, L. 1977.

84-7513. Repealed.

Repeal

Section 84-7513 (Sec. 13, Ch. 549, L. 1975; Sec. 70, Ch. 566, L. 1977), relating to valuation of commercial land, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7513.1. Remodeling of homes, buildings or structrures—assessment provisions. (1) Remodeling of existing buildings or structures shall receive tax benefits in lieu of those provided under Class Nine, 84-301, or 84-301.14, during the construction period and for the following 5 years in accordance with the following schedule. These percentages shall be applied to any increase in taxable value caused by the remodeling:

Construction period	0%
First year following construction	20%
Second year following construction	40%
Third year following construction	60%

Fourth year following construction	80%
Fifth year following construction	100%
Following years	100%

(2) If an existing home, building, or structure is not remodeled as defined in this chapter within the 10 years following passage of this act, a 5% increase shall be added to its taxable value each year that the owner fails to remodel to a maximum of 50%. After a home, building, or structure has been remodeled, the provisions of this section shall be considered to be started again with the beginning of a new 10-year period.

(3) The governing body shall waive the provisions of this section unless it can be demonstrated that lack of regular maintenance over a period of time has failed to maintain the value of the property and that depreciation has taken place to lower the value of the property more than 2½%.

History: En. 84-7513.1 by Sec. 10, Ch. 582, L. 1977.

84-7514. Repealed.

Repeal

Section 84-7514 (Sec. 14, Ch. 549, L. 1975), relating to valuation of industrial land, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7514.1. Special conditions. (1) Any land subclassified under this act may be, at the owner's option, reclassified at any time to a new subclassification within the same classification if allowed under the specifications of that subclassification as set forth in this act.

(2) Any increase in taxes necessary to pay for any loss of revenue caused by this act shall be raised by an increased mill levy rather than by an increase in the valuation of specific property.

(3) Any property owned by one or more persons or companies may be so classified as to meet one or more of the standards of this act.

(4) Hospitals, churches, rest homes, nursing homes, governmental buildings, schools, colleges, or any charitable institution exempt from taxation under 84-202 may be constructed in any of the classified land areas without penalty.

(5) Any aggrieved taxpayer may appeal any decision involving tax benefits or penalties rendered by the governing body under this act to the state tax appeals board.

(6) Any provisions of this act that could affect land which was unzoned at the time of passage may be applied at the discretion of the governing body if planning in jurisdiction has commenced. Should the plan not be accepted, the provisions of this act shall be waived. However, no tax savings or penalties on any property affected will be returned or charged to the respective landowner by its governing body.

History: En. 84-7514.1 by Sec. 11, Ch. 582, L. 1977.

84-7515. Repealed.

Repeal

Section 84-7515 (Sec. 15, Ch. 549, L. 1975), relating to taxation industrial classification property, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7515.1. Rules and regulations. The state administering agency shall adopt such rules and regulations pursuant to the Montana Administrative Procedure Act as are necessary for the administration of this act.

History: En. 84-7515.1 by Sec. 12, Ch. 582, L. 1977.

84-7516. Repealed.

Repeal

Section 84-7516 (Sec. 16, Ch. 549, L. 1975), relating to classification and taxation of new industrial land, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7516.1. Exemptions from act. No provision of this act that imposes a tax penalty shall apply to the primary private residence owned and occupied by a person or persons over 62 years of age.

History: En. 84-7516.1 by Sec. 13, Ch. 582, L. 1977.

84-7517. Repealed.

Repeal

Section 84-7517 (Sec. 17, Ch. 549, L. 1975), relating to classification and taxation of new industrial land, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7517.1. Changes in boundaries. (1) After final adoption of plan, any property owner may petition for a change in the boundary of any land use classification. Within 10 days of receipt of the petition, the governing body shall forward a copy of the petition to the affected planning organization and the appropriate state agencies. After 60 days but within 120 days or receipt of a petition, the governing body shall advertise a public hearing to be held and serve notice on the persons and agencies that have an interest in the subject of the petition, at least 10 days prior to the hearing date.

(2) No petition shall be approved unless the petitioner submits to the governing body proof that the area is needed for a use other than that for which the land is classified and unless at least two of the following criteria apply:

(a) the land is not usable or adoptable for the use for which it is classified, or the new use of the land would be more beneficial to the area;

(b) conditions and trends of development have so changed since the adoption of the existing classification that the proposed classification is reasonable and desirable and the land is capable of sustaining the use proposed; and

(c) the proposed change shall offer the community or individual affected relief from impact caused by an outside or uncontrollable influence facing the community because of new and substantial development.

(3) Should the governing body approve the change in classification, it shall modify the existing land use plan to reflect such changes and shall change any taxable valuations as may be necessary.

(4) The governing body shall act on the petition within 120 days of its receipt.

History: En. 84-7517.1 by Sec. 14, Ch. 582, L. 1977.

84-7518. Repealed.

Repeal

Section 84-7518 (Sec. 18, Ch. 549, L. 1975), relating to open space classification, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7518.1. Nonconforming uses. The lawful use of land or buildings, existing on the date of establishment of any classification or subclassification provided for under this act, may be continued without a tax change although the use does not conform to this act until such time as it is remodeled or changed to a different use.

History: En. 84-7518.1 by Sec. 15, Ch. 582, L. 1977.

84-7519. Repealed.

Repeal

Section 84-7519 (Sec. 19, Ch. 549, L. 1975), relating to taxation of open space, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7519.1. Reappraisal by department and implementation of tax benefits and penalties. (1) The taxable value of property shall always include any increases or decreases determined by the department of revenue pursuant to a reappraisal plan adopted under its authority. Any increases or decreases in value specifically provided for under the terms of this act shall be made after consideration of all such reappraisals.

(2) The department of revenue and its agents shall enter any increase or decrease in taxable value required by this act on the county assessment rolls.

History: En. 84-7519.1 by Sec. 16, Ch. 582, Laws 1977.

84-7520. Repealed.

Repeal

Section 84-7520 (Sec. 20, Ch. 549, L. 1975), relating to reclassification of land, was repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

84-7520.1. Preparation of rules. In preparing rules to implement this act, the state administering agency shall advise all affected local government bodies of proposed rules, consider suggestions from them, and work in conjunction with them.

History: En. 84-7520.1 by Sec. 17, Ch. 582, L. 1977.

Effective Date

Section 18 of Ch. 502, Laws 1977 read "This act is effective January 1, 1978."

Separability Clause

Section 19 of Ch. 582, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 20 of Ch. 582, Laws 1977 read "Sections 84-7502 through 84-7526, R. C. M. 1947, are repealed."

84-7521 to 84-7526. Repealed.

Repeal

Sections 84-7521 to 84-7526 (Secs. 21 to 25, 27, Ch. 549, L. 1975), relating to rules and regulations, exemptions, boundary changes, reappraisals, and effective dates, were repealed by Sec. 20, Ch. 582, Laws 1977, effective January 1, 1978.

CHAPTER 76—BUILDING AND LOAN OR SAVINGS AND LOAN ASSOCIATIONS—TAXATION

Section
84-7601. Taxation of associations.

84-7601. Taxation of associations. (1) Every building and loan or savings and loan association subject to regulation under Title 7, chapter 1, R. C. M. 1947, shall be assessed for and pay taxes upon all real and personal property owned by the association, and also upon the moneyed capital employed in the business. The moneyed capital shall be ascertained by deducting from the amount of bonds, notes and other evidences of indebtedness, including evidences of indebtedness secured by mortgage on real estate or personal property, of the associations, the amount standing to the credit of the members of an association, upon its books, and any indebtedness representing money borrowed for use as moneyed capital. The moneyed capital as so ascertained shall be taxed at the same rate and take the same classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith. The secretary of an association shall furnish to the department of revenue or its agent in the county in which the principal office of the association is located, within five (5) days after demand, a condensed statement verified by his oath, of the resources and liabilities of the association as disclosed by its books, at 12 noon on the first day of January in each year. If the secretary fails to make the statement hereby required, the department or its agent shall immediately obtain the information from any other available source, and for this purpose he shall have access to the books of the association. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by the association, and of the moneyed capital employed in the business of the association, which assessment shall be as fair and equitable as he may be able to make from the best information available, or the assessor may, for the purpose of the assessment, adopt the figures disclosed by any prior report made by the association to any state or federal officer under a state or federal law. A person required by this section to make the statement provided for in this section, who fails to furnish it, is guilty of a misdemeanor.

(2) The amount standing to the credit of each member of an association, upon its books, shall be considered and held as the individual credit of each member, and each member shall list the shares held by him for taxation, at their real value in money, in the county of his residence, the same as other credits are listed, except shares from which loans have been made, or money advanced, by the association, and as to such shares they shall be listed for taxation at the net cash value of the stock, to be ascertained by deducting the loan from the cash value of the shares. Associa-

tions organized under or controlled by Title 7, chapter 1, are subject to taxation in no other way.

History: En. Sec. 20, Ch. 57, L. 1927; amd. Sec. 1, Ch. 62, L. 1929; amd. Sec. 2, Ch. 391, L. 1973; amd. Sec. 1, Ch. 388, L. 1975; Sec. 7-122, R. C. M. 1947; amd. and redes. 84-7001 by Sec. 76, Ch. 431, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 431, and once by Ch. 388. Neither amendment mentioned or included the changes made by the other. Since there appears to be no conflict between them, the compiler has made a composite section embodying the changes made by both amendments.

In addition, Ch. 431, Laws of 1975, redesignated this section as Sec. 84-7001. Since there is already a Sec. 84-7001, the compiler has renumbered the section to appear here.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "assessor of the county" throughout the section to implement Article VIII, section 3 of the 1972 constitution.

Chapter 388, Laws of 1975, substituted "first day of January" for "first Monday of March" near the end of the fourth sentence of subsection (1).

Chapter 431, Laws of 1975, inserted "building and loan or savings and loan" and "subject to regulation under Title 7, chapter 1, R. C. M. 1947" in the first sentence of subsection (1); substituted "shall be ascertained" for "to be ascertained" in the second sentence of subsection (1); substituted near the end of subsection (1) "the assessor may" for "the department or its agents may"; designated the first paragraph as subsection (1) and the second paragraph as subsection (2); substituted "controlled by Title 7, chapter 1 are subject to" for "controlled by this act, shall be subject to"; and made minor changes in phraseology.

CHAPTER 77—COLLECTION PROCEDURE FOR LICENSE TAXES ON EXPRESS, FREIGHT LINE, SLEEPING CAR, TELEGRAPH, AND TELEPHONE COMPANIES

Section
84-7701. Estimation of tax upon failure to file return.
84-7702. Penalty for delinquency—notice—waiver.
84-7703. Lien for collection of tax.

84-7701. Estimation of tax upon failure to file return. If any person subject to a license tax under Title 84, chapters 17, 23, 25, 26, or 48, R.C.M. 1947, fails to file a statement required in connection with that tax or fails to pay the tax within the time provided by law, the department shall proceed to investigate and inform itself as best it may regarding the matters required by the statement and to fix the amount of license tax due from the person. The department's estimate of the tax due is subject to a hearing under 84-711 and a subsequent revision if warranted by the evidence, but the person objecting to the estimate bears the burden of proving the estimate incorrect.

History: En. 84-7701 by Sec. 1, Ch. 36, L. 1977.

Title of Act

An act to provide a uniform collection procedure for the license taxes on express companies, freight line companies, sleeping car companies, telegraph companies, and telephone companies; amending section 84-4821; and repealing sections 84-1704, 84-1705, 84-1706, 84-1708, 84-2307, 84-2308, 84-2309, 84-2504, 84-2506, 84-2507, 84-2508, 84-2604, 84-2606, 84-2607, 84-2608, 84-4823, 84-4825, and 84-4826, R. C. M. 1947.

84-7702. Penalty for delinquency—notice—waiver. (1) Any license tax imposed under Title 84, chapters 17, 23, 25, 26, or 48, R.C.M. 1947, is delinquent if not paid when due. The department shall assess a penalty

equal to 10% of the amount delinquent, and the whole thereof shall bear interest at the rate of 1% per month from the date of delinquency until paid.

(2) The department shall mail to the delinquent taxpayer a letter setting forth the amount of tax, penalty, and interest due, and the letter shall further advise that if payment is not received within 15 days of receipt of the letter, a lien may be filed under 84-7703. The department may waive the 10% penalty if the person responsible demonstrates reasonable cause for the failure to remit the tax or report within the time provided.

History: En. 84-7702 by Sec. 2, Ch. 36, L. 1977.

84-7703. Lien for collection of tax. All tax, penalty, and interest due from any person under Title 84, chapters 17, 23, 25, 26, or 48, R.C.M. 1947, shall be a lien upon any real property of the person owing such tax when the department files a certified copy of the letter sent under 84-7702 in the office of the clerk and recorder of the county where such property is situated. This lien has precedence over any other claim, lien, or demand subsequently filed and recorded and may be enforced in the name of the state of Montana as judgment liens are enforced.

History: En. 84-7705 by Sec. 3, Ch. 36, L. 1977.

CHAPTER 78—CENTRALIZED ASSESSMENTS OF RAILROADS, UTILITIES, AIRLINES, MINES, AND OIL AND GAS WELLS

Section
84-7801. Properties centrally assessed.
84-7802. Notice of assessment—opportunity for conference—appeal.
84-7803. Due date of reports and returns—extensions.
84-7804. Failure to file report—estimate by department—penalty.
84-7805. Apportionment among counties.
84-7806. Transmission to the counties.
84-7807. Amended assessment—transmission to counties.

84-7801. Properties centrally assessed. The department of revenue shall centrally assess each year:

(1) the franchise, roadway, roadbeds, rails, rolling stock, and all other property of railroads operated in more than one county in the state or more than one state, but buildings on right-of-way, land outside the right-of-way and improvements thereon, furniture, machinery, and other personal property situated within a county shall be assessed in that county;

(2) property owned by a corporation or other person constituting a single and continuous property operated in more than one county or more than one state, including telegraph, telephone, microwave, electric power or transmission lines, natural gas or oil pipelines, canals, ditches, flumes, or like properties, but buildings on right-of-way, land outside the right-of-way and improvements thereon, dams and power houses, furniture, machinery, and other personal property situated within a county shall be assessed in that county;

(3) all property of scheduled airlines;

(4) the net proceeds of mines and of oil and gas wells; and

(5) the gross proceeds of coal mines.

History: En. 84-7801 by Sec. 1, Ch. 98, L. 1977.

Title of Act

An act to consolidate property tax procedures for the centralized assessment of railroads, utilities, airlines, mines, and oil and gas wells and to generally revise and clarify the laws relating thereto; amending sections 84-404, 84-708.1, 84-801, 84-802, 84-901, 84-905, 84-5402, 84-5403, 84-5405, 84-5407, 84-6201, 84-6202, 84-6203, and 84-6403, R. C. M. 1947; repealing sections 84-719, 84-720, 84-721, 84-722, 84-802.1, 84-803, 84-804, 84-903, 84-903.1, 84-904, 84-906, 84-907, 84-5408, 84-5410, 84-6207, 84-6209, 84-6402, 84-6405, 84-6405.1, 84-6406, 84-6407, 84-6408, and 84-6410, R. C. M. 1947.

84-7802. Notice of assessment—opportunity for conference—appeal. After assessing property under 84-7801, the department shall notify the owner of such property, in writing, of the assessed value it has determined. Within 20 days following notification, the taxpayer may demand a review of the validity of the department's assessment. The department shall conduct an assessment review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act. However, a party has the right of discovery prior to any assessment revision review conference. Upon consideration following such conference, the department may revise the assessment. Appeals from the final decision may be taken to the state tax appeal board.

History: En. 84-7802 by Sec. 2, Ch. 98, L. 1977.

84-7803. Due date of reports and returns—extensions. Each report or return described in 84-901, 84-1320, 84-5402, 84-6202, or 84-6403 shall be delivered to the department on or before March 31 each year and each report described in 84-801 shall be delivered to the department before April 15 each year. The department may for good cause extend the time for filing a return or report for not more than 30 days.

History: En. 84-7803 by Sec. 3, Ch. 98, L. 1977; amd. Sec. 2, Ch. 494, L. 1977.

Amendments

The 1977 amendment deleted "84-801" before "84-901" in the first sentence.

84-7804. Failure to file report—estimate by department—penalty. If any person fails to file a report or return under 84-7803 by March 31 or by such later date as the department may approve, the department shall estimate the value of the property to have been reported on the basis of the best available information. In estimating the value of the net proceeds of mines, the department shall proceed under 84-5407, and in estimating the value of the gross proceeds of coal mines, the department shall proceed under 84-1318. In estimating value under this section, the department may subpoena a person or his agent as specified in 84-716. An assessment based on estimated value is subject to review under 84-711. Each month or part of a month a report is delinquent, the department shall impose and collect a $25 penalty, the total not to exceed $200, and shall deposit such penalty to the credit of the general fund of the state of Montana. The department will also inform its agents in the counties of the delinquency and the

agents shall assess a penalty of 1% of the tax due for each month or part of a month the report is delinquent.

History: En. 84-7804 by Sec. 4, Ch. 98, L. 1977.

84-7805. Apportionment among counties. The department shall apportion the value of property assessed under 84-802, 84-902, or 84-6404 among the counties in which such property is located. Apportionment shall be on a mileage basis or if the property is of such a character that its value cannot reasonably be apportioned on the basis of mileage, the department may adopt such other method or basis of apportionment as may be just or proper.

History: En. 84-7805 by Sec. 5, Ch. 98, L. 1977.

84-7806. Transmission to the counties. (1) On or before July 1, the department shall transmit to its agent in each county a statement listing:

(a) the assessed value of railroad property, as determined under 84-802, apportioned to the county, including the length or other description of such property;

(b) the assessed value of utility property, as determined under 84-902, apportioned to the county, including the length or other description of such property;

(c) the assessed value of property of airline companies, as determined under 84-6404, apportioned to the county;

(d) the assessed value of the net proceeds and royalties from mines and oil and gas wells in the county, as determined under 84-5403, 84-5406, 84-6203, and 84-6205; and

(e) the assessed value of the gross proceeds from coal mines, as described in 84-1320.

(2) The agent of the department shall enter the assessed values so transmitted in the assessment book in a manner prescribed by the department.

History: En. 84-7806 by Sec. 6, Ch. 98, L. 1977.

84-7807. Amended assessment—transmission to counties. Whenever the valuation of centrally assessed property is revised under 84-7802 or 84-711, the department shall, within 15 days following the final decision or order, transmit a statement of the revised assessment to its agent or the county officer then having custody of the assessment book in the county where the property is located. The revision shall be immediately entered in the assessment book.

History: En. 84-7807 by Sec. 7, Ch. 98, L. 1977.

CHAPTER 79—METAL MINES—AD VALOREM TAXATION OF GROSS PROCEEDS

Section
84-7901. Definitions.
84-7902. Metal mines—ad valorem taxation.
84-7903. Valuation—gross proceeds.
84-7904. Taxation of merchantable value.
84-7905. Imputed value—procedure for metals.
84-7906. Lien of tax.
84-7907. Assessment and collection procedures.

84-7901. Definitions. As used in this chapter the following definitions apply:

(1) "Merchantable value" means the average market value of all salable metals produced or extracted in a county over a 12-month period. If the extracted ores are milled, smelted, or reduced by the taxpayer, the merchantable value in the county in which they are extracted shall be the average market value of these metals after this processing.

(2) "Agreement not at arm's length" means an agreement between parties where the sales price does not represent market value.

(3) "Department" means the department of revenue.

(4) "Market value" means the exchange value of a property in a competitive market.

(5) "Gross proceeds" or "gross metal yield" means the revenue realized from the extraction of metals, determined by multiplying the quantity produced by the merchantable value.

History: En. 84-7901 by Sec. 7, Ch. 498, L. 1977.

84-7902. Metal mines—ad valorem taxation. Each person, partnership, corporation, or association mining or extracting gold, silver, copper, lead, or other metals from whatever source must, on or before March 31 each year, file with the department of revenue a statement of the gross metal yield from each mine owned or worked by such person in the preceding calendar year and the value thereof. The statement shall be in the form prescribed by the department and shall contain the following:

(1) the name, address, and telephone number of the owner, lessee, or operator of the mine;

(2) the mine's location by county and legal description;

(3) the tons of ore extracted from the mine during the taxable period;

(4) the merchantable value in dollars and cents of all metals extracted; and

(5) any other information requested by the department.

History: En. 84-7902 by Sec. 8, Ch. 498, L. 1977.

84-7903. Valuation—gross proceeds. On or before July 1 each year, the department shall determine the merchantable value of all metal production from the previous calendar year. The department shall transmit to its agent in each county where metals are produced the merchantable value

as has been determined by the department for placement on the assessment roll, after subtracting such portion of the proceeds as may be exempt from property taxation.

History: En. 84-7903 by Sec. 9, Ch. 498, L. 1977.

84-7904. Taxation of merchantable value. The department's agent shall prepare from the reported valuation a tax roll which shall be transmitted to the county treasurer on or before September 15 each year. The county treasurer shall proceed to give full notice thereof to each metal producer and to collect the taxes due at the times provided for in 84-4103, and any delinquencies in the payment of same shall be subject to the interest and penalties provided for in 84-4103.

History: En. 84-7904 by Sec. 10, Ch. 498, L. 1977.

84-7905. Imputed value—procedure for metals. If there is no sale or the sale is by an agreement not at arm's length or no statement is filed, the department shall impute the merchantable value of the metal. When imputing value, the department shall consider all appropriate market information available. When the imputed value is contested in any proceedings, the burden of proof is with the contesting party.

History: En. 84-7905 by Sec. 11, Ch. 498, L. 1977.

84-7906. Lien of tax. The tax or penalty on gross proceeds is a lien upon the mine from which the metal is extracted and is prior lien upon all owned or leased personal property and improvements used in extracting the ore or metal. The tax shall be collected in the manner provided under chapter 41 of this title.

History: En. 84-7906 by Sec. 12, Ch. 498, L. 1977.

84-7907. Assessment and collection procedures. The gross proceeds of metal mines shall be assessed and taxes thereon collected under the provisions of 84-7801 through 84-7807.

History: En. 84-7907 by Sec. 13, Ch. 498, L. 1977.

Effective Date

Section 14 of Ch. 498, Laws 1977 read "This act shall apply to all metal mines production for calendar year 1976."

REVISED CODES OF MONTANA

VOLUME 6
Part 1
1977 Cumulative Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 6 (PART 1) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 6 (PART 1) THROUGH VOLUME 557, PACIFIC REPORTER (2ND SERIES)

Edited by

THE PUBLISHERS' EDITORIAL STAFF

THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202

Copyright © 1965, 1967, 1969, 1971, 1973, 1974, 1976 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

Copyright © 1977 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

NEW LAWS IN VOLUME 6 (Part 1)

For index see supplement to Replacement Volume 9

ENACTED IN 1965

Flood control, county and municipal participation, 89-3301 to 89-3313.
Public utility secured transactions and financing statements, 87A-9-302.1 to 87A-9-302.3.
Water conservation board,
Director of board, 89-103.2.
Transfer of records, etc., from Carey land act board and state engineer, 89-103.7.

ENACTED IN 1967

Flood control, county and municipal participation, 89-3309.1, 89-3314.
Imitation Indian articles, 85-301 to 85-304.
Water conservation board, additional powers, 89-132.1.
Water Resources Act, 89-101.1, 89-101.2.
Weather modification and control, 89-310, 89-312 to 89-331.

ENACTED IN 1969

Conservancy districts, 89-3401 to 89-3449.
Sale of commodities, 90-170 to 90-192.
Standard weights and measures, state sealer, 90-153, 90-154, 90-156, 90-157, 90-159 to 90-167, 90-169.
Trustee's annual statement to beneficiaries, 86-513.

ENACTED IN 1971

Dams and dikes, jurisdiction of water resources board, 89-702.1.
Floodway management and regulation, 89-3501 to 89-3515.

ENACTED IN 1973

Door-to-door sales, right to cancel, 85-501 to 85-506.
Institutional funds, management, 86-801 to 86-809.
Underground water, well logs and hearings before board, 89-2928.1, 89-2934.1.
Unfair trade practices and consumer protection, 85-401 to 85-418.
Water Use Act, 89-865 to 89-8-102.
Weather modification, precautions in research and development, 89-312.1.
Weighing devices, licensing, 90-160.1.

ENACTED IN 1974

Charitable trusts treated as private foundations or split-interest trusts under federal tax laws, 86-707.
Drainage district elections, 89-2330.3.
Trustees' Powers Act, 86-901 to 86-911.
Water Resources Act, 89-102.1.
Water turned into natural channels, 89-891.1.
Water use, 89-8-103 to 89-8-111.

NEW LAWS IN VOLUME 6 (Part 1) (Continued)

ENACTED IN 1975

Dam, dike and reservoir construction, federal structures exempt, 89-702.2.

Lake area protection, 89-3701 to 89-3712.

Renewable resource development, 89-3601 to 89-3609.

Water rights,

Environmental impact statement fees, 89-8-102.2.

Saving clause, 89-8-102.1.

ENACTED IN 1977

Personal solicitation sales, 85-502.1, 85-502.2, 85-507.

Sound recordings, 85-601 to 85-607.

Water Use Act, recovery of attorney fees, 89-8-100.1.

Water user's associations, operation of projects, 89-1107.

AMENDMENTS IN VOLUME 6 (Part 1)

Conservancy districts, 89-3403 to 89-3408, 89-3410, 89-3411, 89-3415, 89-3421, 89-3422, 89-3425, 89-3426, 89-3438, 89-3449.

Dam, dike and reservoir construction, 89-702, 89-702.1, 89-714.

Drainage districts,

Annexed lands, assessments against, 89-2810.

Bonds, 89-2501, 89-2502.

Commissioners, election, 89-2302, 89-2330.3.

Continuation and alteration, 89-2701, 89-2711.

Creation, 89-2203.

Taxes and assessments, 89-2330 to 89-2330.2, 89-2332 to 89-2334, 89-2337, 89-2338, 89-2348, 89-2401, 89-2405, 89-2410, 89-2411.

Flood control and water conservation, county and municipal participation, 89-3301 to 89-3304, 89-3306 to 89-3312.

Floodway management and regulation, 89-3502 to 89-3512, 89-3514, 89-3515.

Imitation Indian articles, segregation, 85-302.

Irrigation districts,

Apportionment of water, interference, 89-1607, 89-1616.

Board's power to purchase or lease storage and irrigation works, 89-1301.

Bonds, 89-1701 to 89-1705, 89-1706, 89-1708, 89-1712, 89-1713.

Change in boundaries, notice of hearing, 89-1411.

Commissioners of district, 89-1204, 89-1205, 89-1208.

Conveyance of property to obtain financial assistance, 89-1905.

Dissolution, 89-2003.

Interpretation of title, 89-2109.

Organization and incorporation, purpose, 89-1201, 89-1202, 89-1220.

Powers, duties and elections of commissioners, 89-1301, 89-1303, 89-1311, 89-1319, 89-1320, 89-1322.

Records and inspections of commissioners, 89-2107.

Records of board of control, 89-1215.

Taxes and assessments, 89-1801, 89-1803 to 89-1806, 89-1811, 89-1812, 89-1816, 89-1819.

United States contracts, court approval required, 89-2126.

Paint labeling and analysis, 90-701 to 90-706.

Personal solicitation sales, 85-501, 85-503 to 85-506.

Public utility secured transactions and financing statements, 87A-9-302.1, 87A-9-302.2.

Renewable resource development, 89-3602, 89-3604 to 89-3608.

Standard weights and measures, 90-153, 90-156, 90-159 to 90-167, 90-169 to 90-171, 90-173, 90-175, 90-178, 90-180, 90-182, 90-184, 90-186 to 90-190.

Trade-marks, forgery, counterfeiting or unlawful use, 85-105.

Marks and devices, filing, penalties for violation, 85-107.

Trusts and trustees, 86-511.

Compensation of trustee, 86-511.

Funeral plan or related services, prearranged, contract, 86-701.

Institution holding money, report by, 86-703.

Trustees' powers, transfer of office prohibited, 86-905.

Unemployment compensation law, 87-103 to 87-114, 87-116, 87-118, 87-120 to 87-124, 87-127 to 87-136, 87-138 to 87-140, 87-142, 87-145 to 87-149.

Unfair trade practices and consumer protection, 85-407 to 85-410, 85-416.

Uniform Commercial Code,
- Investment securities, 87A-8-102, 87A-8-320.
- Sales, passing of title, 87A-2-401, 87A-2-403.
- Secured transactions, 87A-9-302, 87A-9-302.2, 87A-9-401 to 87A-9-407.
- Short title, 87A-1-101.

Water conservation moneys, 89-401, 89-402.

Water Resources Act, 89-101.1, 89-102, 89-103.2, 89-104 to 89-106, 89-111, 89-113 to 89-115, 89-116.1, 89-117 to 89-120, 89-124, 89-125, 89-127, 89-132.1, 89-140, 89-142.

Waters and water rights,
- Commissioners to administer distribution of water under established rights, complaints, 89-1001, 89-1015.
- **Diversion of natural flow**, 89-806.
- Groundwater appropriations, 89-2911, 89-2914 to 89-2918, 89-2926, 89-2927, 89-2928.1 to 89-2934.1, 89-2936.
- Surplus water, owners to sell, 89-823.

Water Use Act, 89-867, 89-869, 89-872 to 89-877, 89-880, 89-881, 89-884, 89-885, 89-890, 89-892, 89-893, 89-896, 89-899, 89-8-100, 89-8-102.2, 89-8-105, 89-8-107.

Weather modification, 89-310, 89-312, 89-312.1, 89-314, 89-317 to 89-320, 89-322, 89-324 to 89-328, 89-330.

Yellowstone River waters, 89-906 to 89-909, 89-911, 89-912, 89-914 to 89-916.

MONTANA REVISED CODES

TITLE 85—TRADE-MARKS AND TRADE PRACTICES

Chapter 1. Trade-marks, 85-105, 85-107.
3. Sale of imitation Indian articles, 85-301 to 85-304.
4. Unfair trade practices and consumer protection, 85-401 to 85-418.
5. Door-to-door sales, 85-501, 85-502.1, 85-502.2, 85-503 to 85-507.
6. Sound recordings, 85-601 to 85-607.

CHAPTER 1—TRADE-MARKS

Section 85-105. Penalties.
85-107. Penalties.

85-105. (4290) **Penalties.** The penalty for forging, counterfeiting, or unlawful using of trade-marks is as provided in 94-6-308 or 94-6-310, whichever is applicable.

History: En. Sec. 3164, Pol. C. 1895; re-en. Sec. 2040, Rev. C. 1907; re-en. Sec. 4290, R. C. M. 1921; amd. Sec. 22, Ch. 513, L. 1973; amd. Sec. 6, Ch. 265, L. 1977.

Amendments

The 1973 amendment substituted "is a misdemeanor" for "is provided in section 94-35-226" at the end of the section.

The 1977 amendment substituted "as provided in 94-6-308 or 94-6-310, whichever is applicable" for "a misdemeanor."

85-107. (4292) **Penalties.** Every person who violates the provisions of 85-106 is punishable as provided in 94-6-308 and 94-6-310.

History: En. Sec. 3301, Pol. C. 1895; re-en. Sec. 2104, Rev. C. 1907; re-en. Sec. 4292, R. C. M. 1921; amd. Sec. 7, Ch. 265, L. 1977.

Amendments

The 1977 amendment substituted "94-6-308 and 94-6-310" for "sections 94-35-226 and 94-35-230"; and made a minor change in phraseology.

CHAPTER 3—SALE OF IMITATION INDIAN ARTICLES

Section 85-301. Definitions.
85-302. Imitation Indian articles to be clearly designated and segregated.
85-303. Designation of authentic Indian articles.
85-304. Violation as misdemeanor.

85-301. Definitions. As used in this act:

(1) "Indian" means a person who is enrolled or who is a lineal descendant of one enrolled upon an enrollment listing of the bureau of Indian affairs, or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

(2) "Imitation Indian arts or crafts articles" means those made by machine, or made wholly out of synthetic or artificial materials, or articles which are not made by Indian labor or workmanship.

History: En. Sec. 1, Ch. 42, L. 1967.

Title of Act

An act regulating the retail sale of imitation American Indian arts and crafts articles.

85-302. Imitation Indian articles to be clearly designated and segregated. No person shall distribute, sell, or offer for sale in this state any imitation American Indian arts or crafts articles unless the articles are at all times clearly and legibly designated as imitation. All imitation articles shall be physically segregated from authentic Indian articles for display purposes.

History: En. Sec. 2, Ch. 42, L. 1967; amd. Sec. 1, Ch. 52, L. 1973.

Amendments

The 1973 amendment added the second sentence.

85-303. Designation of authentic Indian articles. Only those articles bearing a registered trade-mark or label of authentic Indian labor or workmanship may be deemed authentic Indian arts or crafts articles.

History: En. Sec. 3, Ch. 42, L. 1967.

85-304. Violation as misdemeanor. Any person who violates this act is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 42, L. 1967.

CHAPTER 4—UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION

Section 85-401. Definitions.
85-402. Unfair competition and deceptive practices unlawful.
85-403. Weight given to federal interpretation—rules interpreting unfair competition and deception.
85-404. Exemptions from act.
85-405. Action by department to restrain unlawful acts.
85-406. Restoration of property unlawfully acquired.
85-407. Powers of receiver—proof of damages—jurisdiction.
85-408. Damages—notice to public agencies—attorney fees—prior judgment as evidence.
85-409. Assurance of voluntary compliance.
85-410. Investigative demand on unlawful practices.
85-411. Department power to subpoena—administer oaths—conduct hearings.
85-412. Service of process.
85-413. Judicial enforcement of department orders—contempt.
85-414. Violation of injunction—willful use of unlawful method—fraud.
85-415. Dissolution or forfeiture of corporate franchise for violation.
85-416. Assistance and actions by county attorney—reports—action by attorney general on request.
85-417. County attorney's investigator.
85-418. Short title.

85-401. Definitions. As used in this act:

(1) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(2) "Trade" and "commerce" means the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing

of value, wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of the state.

(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(4) "Examination" of documentary material includes the inspection, study, or copying of such material, and the taking of testimony under oath or acknowledgment in respect to any such documentary material or copy thereof.

(5) "National advertising" means any advertising run simultaneously in five or more states and over which a local advertiser has no control.

(6) "Department" means the department of business regulation created in section 82A-401.

History: En. Sec. 1, Ch. 275, L. 1973.

Title of Act

An act to be cited as The Montana Unfair Trade Practices and Consumer Protection Act of 1973; prohibiting unfair trade practices and providing investigation procedures and penalties for violations of the act.

85-402. Unfair competition and deceptive practices unlawful. Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

History: En. Sec. 2, Ch. 275, L. 1973.

Cross-References

Violation of Consumer Reporting Agencies Act, secs. 18-501 to 18-521, as violation of this chapter, sec. 18-521.

85-403. Weight given to federal interpretation—rules interpreting unfair competition and deception. (1) It is the intent of the legislature that in construing section 2 [85-402] of this act due consideration and weight shall be given to the interpretations of the federal trade commission and the federal courts relating to section 5 (a) (1) of the Federal Trade Commission Act [15 U.S.C., 45 (a) (1)], as amended; and

(2) The department may make rules and regulations interpreting the provisions of section 2 [85-402] of this act. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the federal trade commission and the federal courts in interpreting the provisions of section 5 (a) (1) of the Federal Trade Commission Act [15 U.S.C., 45 (a) (1)], as amended.

History: En. Sec. 3, Ch. 275, L. 1973.

85-404. Exemptions from act. Nothing in this act shall apply to:

(1) actions or transactions permitted under laws administered by the Montana public service commission acting under statutory authority of this act or the United States.

(2) acts done by the retail merchants, publisher, owner, agent, or employee of a newspaper, periodical or radio or television station or advertising agency in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, mis-

leading or deceptive character of the advertisement and did not have a direct financial interest in the advertised product or service.

(3) National advertising shall be exempt from this act.

History: En. Sec. 4, Ch. 275, L. 1973.

85-405. Action by department to restrain unlawful acts. Whenever the department has reason to believe that any person is using, has used, or is about to knowingly use any method, act or practice declared by section 2 [85-402] of this act to be unlawful, and that proceeding would be in the public interest, the department may bring an action in the name of the state against such person to restrain by temporary or permanent injunction the use of such method, act or practice, upon the giving of appropriate notice to that person. The notice must state generally the relief sought and be served in accordance with section 13 [85-413] of this act in at least twenty (20) days before the hearing of the action. The action may be brought in the district court in which such person resides or has his principal place of business, or, with consent of the parties, may be brought in the district court of Lewis and Clark county. The courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this act, and such injunctions shall be issued without bond.

History: En. Sec. 5, Ch. 275, L. 1973.

85-406. Restoration of property unlawfully acquired. The court may make such additional orders or judgment as may be necessary to restore to any person any moneys or property, real or personal, which may have been acquired by means of any practice in this act declared to be unlawful, including the appointment of a receiver or the revocation of a license or certificate authorizing that person to engage in business in this state, or both.

History: En. Sec. 6, Ch. 275, L. 1973.

85-407. Powers of receiver—proof of damages—jurisdiction. (1) When a receiver is appointed by the court pursuant to this act, he has the power to sue for, collect, receive, and take into his possession all goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description derived by means of any practice declared to be illegal and prohibited by this act, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court.

(2) Any person who has suffered damages as a result of the use or employment of any unlawful practice and submits proof to the satisfaction of the court that he has in fact been damaged may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses.

(3) In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court.

(4) The court has jurisdiction of all questions arising in the proceedings and may make orders and judgments as may be required.

History: En. Sec. 7, Ch. 275, L. 1973; amd. Sec. 8, Ch. 265, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

85-408. Damages—notice to public agencies—attorney fees—prior judgment as evidence. (1) Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 85-402 may bring an individual but not a class action under the rules of civil procedure in the district court of the county in which the seller or lessor resides or has his principal place of business or is doing business to recover actual damages or $200, whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained and may provide such equitable relief as it considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section, the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action.

(4) Any permanent injunction, judgment, or order of the court made under 85-405 shall be prima facie evidence in an action brought under this section that the respondent used or employed a method, act, or practice declared unlawful by 85-402.

History: En. Sec. 8, Ch. 275, L. 1973; amd. Sec. 9, Ch. 265, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

85-409. Assurance of voluntary compliance. In the administration of this act, the department may accept an assurance of voluntary compliance with respect to any method, act, or practice considered to be violative of the act from any person who has engaged or was about to engage in any such method, act, or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business or the district court of Lewis and Clark County. Assurance of voluntary compliance is not an admission of violation for any purpose. Matters thus closed may at any time be reopened by the department for further proceedings in the public interest, pursuant to 85-405.

History: En. Sec. 9, Ch. 275, L. 1973; amd. Sec. 10, Ch. 265, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

85-410. Investigative demand on unlawful practices. (1) When it appears to the department that the person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this act, or when the department believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this act, the department may execute in writing and cause to be served upon any person who is believed to have information, documentary material, or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale, or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date or to modify or set aside the demand, stating good cause, may be filed in the district court of the county in which the person served with the demand resides or has his principal place of business or in the district court of Lewis and Clark County.

History: En. Sec. 10, Ch. 275, L. 1973; amd. Sec. 11, Ch. 265, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

85-411. Department power to subpoena—administer oaths—conduct hearings. To accomplish the objectives and to carry out the duties prescribed by this act, the department, in addition to other powers conferred upon it by this act, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe forms and promulgate rules and regulations as may be necessary, which rules and regulations shall have the force of law; provided that none of the powers conferred by this act may be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture; and provided further that information obtained pursuant to the powers conferred by this act shall not be made public or disclosed by the department or its employees beyond the extent necessary for law enforcement purposes in the public interest.

History: En. Sec. 11, Ch. 275, L. 1973.

85-412. Service of process. Service of any notice, demand or subpoena under this act shall be made personally within this state, but if such cannot be obtained, substitute service may be made in the manner provided in the Montana Rules of Civil Procedure.

History: En. Sec. 12, Ch. 275, L. 1973.

85-413. Judicial enforcement of department orders—contempt. If any person fails or refuses to file any statement or report, or obey any subpoena or investigative demand issued by the department, the department may, after notice, apply to the district court and, after hearing thereon, request an order:

(1) granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;

(2) vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

(3) granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

History: En. Sec. 13, Ch. 275, L. 1973.

85-414. Violation of injunction—willful use of unlawful method—fraud. (1) Any person who violates the terms of an injunction issued under section 5 [85-405] of this act shall forfeit and pay to the state a civil penalty of not more than ten thousand dollars ($10,000) per violation. For the purposes of this section, the district court issuing an injunction retains jurisdiction, and the cause continued, and in such cases the department acting in the name of the state may petition for recovery of civil penalties.

(2) In any action brought under section 5 [85-405] of this act, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by section 2 [85-402] of this act, the department, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than five hundred dollars ($500) per violation.

(3) Any person who engages in a fraudulent course of conduct declared unlawful by section 2 [85-402] of this act shall, upon conviction, be fined not more than two thousand dollars ($2,000), imprisoned for not more than one (1) year, or both, in the discretion of the court. Nothing in this subsection limits any other provision of this act.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of section 2 [85-402] of this act.

History: En. Sec. 14, Ch. 275, L. 1973.

85-415. Dissolution or forfeiture of corporate franchise for violation. Upon petition by the department, the district court may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corpo-

ration which violates the terms of any injunction issued under section 5 [85-405] of this act.

History: En. Sec. 15, Ch. 275, L. 1973.

85-416. Assistance and actions by county attorney—reports—action by attorney general on request. It is the duty of the county attorney to lend to the department such assistance as the department may request in the commencement and prosecution of actions pursuant to this act. The county attorney or the attorney general, on request of the department or a county attorney, may initiate all procedures and prosecute actions in the same manner as provided for the department. If an action is prosecuted by the county attorney alone or the attorney general on request of the county attorney, the person prosecuting shall notify the department as to the nature of the action and the parties to the action within thirty (30) days of the filing of the action. The county attorney or attorney general shall make a report thereon to the department within thirty (30) days of the final disposition of the matter.

History: En. Sec. 16, Ch. 275, L. 1973; amd. Sec. 1, Ch. 407, L. 1977.

Amendments

The 1977 amendment inserted "or the attorney general, on request of the department or a county attorney" in the second sentence; inserted "or the attorney general on request of the county attorney" in the third sentence; inserted "or attorney general" in the last sentence; and made minor changes in phraseology and punctuation.

Effective Date

Section 2 of Ch. 407, Laws 1977 provided the act should be effective upon its passage and approval. Approved April 8, 1977.

85-417. County attorney's investigator. The county attorney in first and second class counties may designate an employee to act as a full-time investigator.

History: En. Sec. 17, Ch. 275, L. 1973.

Separability Clause

Section 18 of Ch. 275, Laws 1973 read "If any provision of this act is declared unconstitutional, or the application to any person or circumstances is held invalid, the constitutionality of the remainder of the act and its applicability to other persons and circumstances is not affected."

85-418. Short title. This act shall be cited as the "Montana Unfair Trade Practices and Consumer Protection Act of 1973."

History: En. Sec. 19, Ch. 275, L. 1973.

CHAPTER 5—DOOR-TO-DOOR SALES

Section 85-501. Purpose.
85-502.1. Definitions.
85-502.2. Disclosure obligation.
85-503. Buyer's right to cancel personal solicitation sale—time allowed—notice—return of goods.
85-504. Notice to buyer of right to cancel—form and contents—notice of cancellation.
85-505. Repayment to buyer canceling—liability for failure to repay—retention of goods by buyer.
85-506. Redelivery of goods—care of goods by buyer.
85-507. Violation.

85-501. Purpose. The purpose of this act is to afford consumers, subjected to high pressure personal solicitation sales tactics a "cooling-off" period.

History: En. Sec. 1, Ch. 426, L. 1973; amd. Sec. 1, Ch. 191, L. 1977.

Title of Act

An act to provide for a three (3) day cooling-off period on door-to-door sales contracts.

Amendments

The 1977 amendment substituted "personal solicitation sales" for "door-to-door sales."

85-502. Repealed.

Repeal

Section 85-502 (Sec. 2, Ch. 426, L. 1973), relating to definitions of "consumer transaction" and "home solicitation sale," was repealed by Sec. 9, Ch. 191, Laws 1977.

85-502.1. Definitions. As used in this act the following definitions apply:

(1) "Buyer" means anyone who gives a consideration for the purchase or use of goods or services.

(2) "Personal solicitation" means any attempt by a seller who regularly engages in transactions of the same kind to sell goods or services which are primarily for personal, family, or household purposes, when either the seller or a person acting for him contacts the buyer by telephone or in person other than at the place of business of the seller, except:

(a) an attempted sale in which the buyer personally knows the identity of the seller, the name of the business, firm, or organization he represents and the identity or kinds of goods or services offered for sale;

(b) an attempted sale in which the buyer has initiated the contact with the seller;

(c) an attempted sale of a newspaper subscription in which the seller is a minor child engaged in both the delivery and the sale of the newspaper; or

(d) an attempted sale of an insurance policy.

(3) "Personal solicitation sale" means the purchase, lease, or rental of any goods or services following a personal solicitation by the seller or a person acting for him, provided the buyer is required to give consideration in excess of $25 in cash or credit therefor.

(4) "Seller" means a lessor, renter, or anyone offering goods or services for consideration, including assignee of a seller.

History: En. 85-502.1 by Sec. 2, Ch. 191, L. 1977.

Title of Act

An act for the general revision of laws relating to a three-day cooling off period on door-to-door sales; amending sections 85-501, and 85-503 through 85-506, R. C. M. 1947; repealing section 85-502, R. C. M. 1947.

85-502.2. Disclosure obligation. Before any personal solicitation each seller shall, at the time of initial contact or communication with the potential buyer, clearly and expressly disclose the individual seller's name, the name of the business, firm, or organization he represents, the identity

or kinds of goods or services he wishes to demonstrate or sell, and that he wishes to demonstrate or sell the identified goods or services. When the initial contact is made in person, the seller shall also show the potential buyer an identification card which clearly states the seller's name and the name of the business or organization he represents. The disclosures required by this section shall be made before asking any questions or making any statements except an initial greeting. Nonprofit organizations are exempt from the requirements of this section.

History: En. 85-502.2 by Sec. 3, Ch. 191, L. 1977.

85-503. Buyer's right to cancel personal solicitation sale—time allowed—notice—return of goods. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer or any other person obligated for any part of the purchase price may cancel a personal solicitation sale until midnight of the third business day after the day on which the buyer has signed an agreement or offer to purchase relating to such sale, provided that in the case of a personal solicitation sale made by telephone, the buyer may cancel at any time prior to his signing of an agreement or offer to purchase relating to such sale.

(2) Cancellation occurs when written notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, is considered given when deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the buyer not to be bound.

(5) A personal solicitation sale may not be canceled if, in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the buyer.

History: En. Sec. 3, Ch. 426, L. 1973; amd. Sec. 4, Ch. 191, L. 1977.

Amendments

The 1977 amendment substituted "personal solicitation" for "home solicitation" in two places; added the proviso to subsection (1); and made minor changes in phraseology and punctuation.

85-504. Notice to buyer of right to cancel—form and contents—notice of cancellation. (1) The seller shall furnish the buyer a notice which contains the statement set forth in subsection (a) or a statement as prescribed by federal trade commission rule governing door-to-door sales, and printed in capital and lowercase letters of not less than 10-point boldfaced type with the seller's name and business address and the statement set forth in subsection (b):

(a) YOU MAY CANCEL THIS SALE WITHIN THREE BUSINESS DAYS. If you decide within 3 days that you want to cancel the sale, tear off and mail the bottom of this card. To cancel, the card must be mailed BY CERTIFIED MAIL within 3 days after you sign the contract.

(date)

(b) CONTRACT CANCELED

I hereby cancel this sale.

(Buyer's signature)

(2) Until the seller has complied with this section the buyer or any other person obligated for any part of the purchase price may cancel the personal solicitation sale by notifying the seller in any manner and by any means of his intention to cancel; provided, however, that failure to mail the cancellation by certified mail does not nullify the cancellation as long as the cancellation is mailed within the prescribed time period. The period prescribed by 85-503 shall begin to run from the time the seller complies with this section.

History: En. Sec. 4, Ch. 426, L. 1973; amd. Sec. 5, Ch. 191, L. 1977.

Amendments

The 1977 amendment inserted "or a statement as prescribed by federal commission rule governing door-to-door sales" in subsection (1); changed the minimum type size from 12-point to 10-point type; substituted "CONTRACT CANCELED" for "CONTRACT SIGNED" in (b) of the notice form; substituted "personal solicitation" for "home solicitation" in subsection (2); and made minor changes in phraseology, punctuation and style.

85-505. Repayment to buyer canceling—liability for failure to repay—retention of goods by buyer. (1) Except as provided in this section, within 10 days after a personal solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note of other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the cash down payment or goods tendered as down payment, he shall be liable to the buyer for the entire down payment, and if the buyer is successful in his action therefor the court shall also award him $100 plus reasonable attorneys' fees and costs.

(4) Until the seller has complied with this section the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled.

History: En. Sec. 5, Ch. 497, L. 1973; amd. Sec. 6, Ch. 191, L. 1977.

Amendments

The 1977 amendment substituted "personal solicitation" for "home solicitation" in subsection (1); and made minor changes in punctuation and style.

85-506. Redelivery of goods—care of goods by buyer. (1) Except as provided by 85-505(4), within a reasonable time after a personal solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than his residence. If the seller fails to demand possession of such goods within

a reasonable time after cancellation or revocation, the goods shall become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days shall be presumed to be a reasonable time.

(2) The buyer shall take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk and such goods must be returned in substantially the same condition as received.

History: En. Sec. 6, Ch. 426, L. 1973; amd. Sec. 7, Ch. 191, L. 1977.

Amendments

The 1977 amendment substituted "personal solicitation" for "home solicitation" in subsection (1); and made minor changes in style.

85-507. Violation. Except where inconsistent with the provisions of this act, a violation of this act is a violation of the Montana Unfair Trade Practices and Consumer Protection Act of 1973.

History: En. 85-507 by Sec. 8, Ch. 191, L. 1977.

Repealing Clause

Section 9 of Ch. 191, Laws 1977 read "Section 85-502, R. C. M. 1947, is repealed."

CHAPTER 6—SOUND RECORDINGS

Section 85-601. Definitions.
85-602. Unauthorized manufacture of sound recordings prohibited.
85-603. Sale of unauthorized sound recordings prohibited.
85-604. Sale of sound recording without name of manufacturer and name of performer or group prohibited.
85-605. Forfeiture.
85-606. Exceptions.
85-607. Civil litigation.

85-601. Definitions. As used in this act, the following definitions apply:

(1) "Person" means any individual, firm, partnership, corporation, or association.

(2) "Owner" means the person who owns the original fixation of sounds embodied in a master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded and from which the transferred recorded sounds are directly derived.

(3) "Performer" means the person or persons appearing in a performance.

(4) "Sound recording" means a phonograph record, disc, wire, tape, film, or other article on which sound is recorded.

History: En. 85-601 by Sec. 1, Ch. 367, L. 1977.

Title of Act

An act concerning piracy of sound recordings and live performances and the transfer of recorded sound without permission of the lawful owner; providing penalties for violations and an immediate effective date.

85-602. Unauthorized manufacture of sound recordings prohibited. (1) No person may knowingly, without the consent of the owner, trans-

fer or cause to be transferred any sounds recorded on a sound recording with the intent to sell or cause to be sold for profit any sound recordings onto which such sounds are transferred or to use such sound recordings to promote the sale of any product.

(2) No person may knowingly and without the consent of the performer transfer or cause to be transferred to any sound recording any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or to be used to promote the sale of any product such sound recording onto which such performance is so transferred.

(3) A person convicted of violating this section shall be imprisoned in the state prison for any term not to exceed 10 years.

History: En. 85-602 by Sec. 2, Ch. 367, L. 1977.

85-603. Sale of unauthorized sound recordings prohibited. (1) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording that has been produced without the consent of the owner. Possession of 5 or more duplicate copies or 20 or more individual copies of such sound recording produced without the consent of the owner creates a rebuttable presumption that the copies are intended for sale or distribution in violation of this section.

(2) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recordings embodying any performance, whether live before an audience or transmitted by wire or through the air by radio or television, without the prior express written consent of the performer.

(3) A person convicted of violating this section shall be fined no more than $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 85-603 by Sec. 3, Ch. 367, L. 1977.

85-604. Sale of sound recording without name of manufacturer and name of performer or group prohibited. (1) No person may advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording unless the outside cover, box, or jacket clearly and conspicuously discloses the name and address of its manufacturer and the name of the performer actually producing the sounds recorded.

(2) A person convicted of violating this section shall be fined no more than $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 85-604 by Sec. 4, Ch. 367, L. 1977.

85-605. Forfeiture. Any article produced in violation of 85-602, 85-603, or 85-604 and any equipment used to produce it are subject to forfeiture to and destruction by the appropriate law enforcement agency.

History: En. 85-605 by Sec. 5, Ch. 367, L. 1977.

85-606. Exceptions. This act does not apply to:

(1) any broadcaster who, in connection with a radio, television, or cable broadcast transmission or for the purpose of archival preservation, transfers any sounds recorded on a sound recording;

(2) any person who transfers such sounds in the home for personal use, without compensation; or

(3) any person who transfers a single copy of such sounds for bona fide educational purposes, provided that no person directly or indirectly derives any pecuniary gain from such transfer.

History: En. 85-606 by Sec. 6, Ch. 367, L. 1977.

85-607. Civil litigation. This act neither enlarges nor diminishes the rights of parties in civil litigation.

History: En. 85-607 by Sec. 7, Ch. 367, L. 1977.

Separability Clause

Section 8 of Ch. 367, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 9 of Ch. 367, Laws 1977 provided the act should be effective on its passage and approval. Approved April 14, 1977.

TITLE 86—TRUSTS AND USES

Chapter 5. Trusts for benefit of third persons—obligations, powers and rights of trustees, 86-511, 86-513.
7. Miscellaneous trusts, 86-701, 86-703, 86-707.
8. Management of institutional funds, 86-801 to 86-809.
9. Trustees' Powers Act, 86-901 to 86-911.

CHAPTER 1—TRUSTS AND USES IN RELATION TO REAL PROPERTY

86-103. (6785) Transfer to one for money paid by another, etc.

Conveyances between Persons in Confidential Relationships

In suit by beneficiaries to recover from deceased's brother stock allegedly belonging to estate, exception to general rule raising presumption of gift in favor of person to whom property is transferred when person making payment and transferee stand in confidential relation did not apply to transfer from deceased to brother. Detra v. Bartoletti, 150 M 210, 433 P 2d 485.

Laches

The plaintiff's claim of a resulting trust in real property, raised after a period of 24 years, and after the principal parties were dead, warrants the application of the doctrine of laches. Adair v. Capital Invest. Co., — M —, 525 P 2d 548.

CHAPTER 2—TRUSTS IN GENERAL—NATURE AND CREATION

86-210. (7887) Involuntary trust resulting from fraud, etc.

Parent and Child

Constructive trust would not be imposed on lands deeded son by aged mother in absence of evidence that son gained land by accident, mistake, undue influence, violation of trust or other wrongful act or by constructive fraud. Bodine v. Bodine, 149 M 29, 422 P 2d 650.

Where son owed mother large sum of money and conveyed to her five parcels of land, there was no undue influence, fraud or deceit involved in the transaction, and so there was no constructive trust created. Mahaffey v. DeLeeuw, — M —, 542 P 2d 103.

Pastoral Relationship

Evidence supported findings of fraud and undue influence constituting pastor an involuntary trustee of land conveyed to him, where the grantor had made substantial contributions to grantee's ministry, had financed a missionary trip for him, and had conveyed the land, intending it for use in the church work, on grantee's promise to reconvey a portion of it, but the grantee had failed to keep promises to take grantor on the missionary trip and to reconvey a portion of the land, and the conveyance of land, prepared by grantee's attorney, had been to grantee and himself personally rather than to his church; under these circumstances, cancellation of the conveyance was proper. Hensley v. Stevens, 156 M 486, 481 P 2d 694.

Transfer in Contemplation of Death

Where deceased, engaged in cattle partnership with his sister and her husband, during his last illness transferred bank account and interest in cattle to his sister and her husband, obligating them to pay all bills and expenses surrounding his illness and transfer some money to deceased's son, the sister and her husband were involuntary trustees of the property transferred from which they had paid expenses of deceased's last illness. Marshall v. Minlschmidt, 148 M 263, 419 P 2d 486, 488.

CHAPTER 3—TRUSTEE'S OBLIGATIONS—SALE, MORTGAGE OR LEASE OF TRUST PROPERTY

86-327. Repealed.

Repeal

Section 86-327 (Sec. 1, Ch. 66, L. 1965), authorizing fiduciary to hold property received even though not qualified investments, was repealed by Sec. 11, Ch. 297, Laws of 1974.

CHAPTER 5—TRUSTS FOR BENEFIT OF THIRD PERSONS—OBLIGATIONS, POWERS AND RIGHTS OF TRUSTEES

Section 86-511. Compensation of trustee.
86-513. Trustee appointed by will, deed or agreement—income trust beneficiary—annual statement.

86-511. (7918) **Compensation of trustee.** When a declaration of trust, created by will or otherwise, is silent upon the subject of or the rate or amount of compensation, the trustee is entitled to such compensation as may be reasonable under the circumstances.

History: En. Sec. 3031, Civ. C. 1895; re-en. Sec. 5403, Rev. C. 1907; re-en. Sec. 7918, R. C. M. 1921; amd. Sec. 1, Ch. 65, L. 1965. Cal. Civ. C. Sec. 2274. Field Civ. C. Sec. 1206.

Amendment

The 1965 amendment inserted "created by will or otherwise"; inserted "or the rate or amount of" before "compensation"; substituted "such compensation as may be reasonable under the circumstances" for "the same compensation as an executor"; and deleted second and third sentences, for text of which see parent volume.

86-513. Trustee appointed by will, deed or agreement—income trust beneficiary—annual statement. The trustee or trustees appointed by any will, deed or agreement heretofore or hereafter executed shall mail or deliver at least annually to each income trust beneficiary a written itemized statement of all current receipts and disbursements made by the trustee of the funds of the trust, both principal and income, and upon the request of any such beneficiary shall furnish him an itemized statement of all property then held by such trustee, and may also file any such statement in the district court of the county in which the trustee or one of the trustees resides.

In addition thereto any such trustee or trustees, whenever it or they so desire, may file in the district court of the county in which the trustees or one of the trustees resides an intermediate account under oath showing:

(1) the period covered by the account;

(2) the total principal with which the trustee is chargeable according to the last preceding account or the inventory if there is no preceding account;

(3) an itemized statement of all principal funds received and disbursed during such period;

(4) an itemized statement of all income received and disbursed during such period, unless waived;

(5) the balance of such principal and income remaining at the close of such period and how invested;

(6) the names and addresses of all living beneficiaries, including contingent beneficiaries, of the trust, and a statement as to any such beneficiary known to be under legal disability;

(7) a description of any possible unborn or unascertained beneficiary and his interest in the trust fund.

In addition thereto, after the time for termination of the trust shall have arrived, the trustee or trustees may file a final account in similar manner.

Upon the petition of any settlor or of any beneficiary of such a trust, after due notice thereof to the trustee, the district court in the county where the trustee or one of the trustees resides may direct the trustee or trustees thereof to file in said court such an account at any time subsequent to one year from the day on which such a report was last filed, or if none, then after one (1) year from the inception of the trust.

When any such account shall have been filed, the clerk of the court where filed shall fix a return day therefor and issue a notice as provided for herein. If each of the beneficiaries and the guardians and guardians ad litem, if any, is personally served with a copy of the notice, whether within or outside the state of Montana, at least twenty-five (25) days prior to the return day, then no publication of the notice shall be required; otherwise the trustee or trustees shall cause notice as provided for herein to be given by publishing the same at least once a week for three (3) successive weeks preceding the return day, the first publication to be at least twenty-five (25) days preceding the return day, such publication to be in a newspaper of general circulation in the county, or if none, then in adjoining county. And in any event, at least twenty-five (25) days prior to the return day, a copy of the notice shall be either served upon each beneficiary not represented by guardian or guardian ad litem or mailed to each such beneficiary not so served at such beneficiary's address last known to the trustee; and shall be either served upon each guardian and guardian ad litem, or mailed to each such guardian and guardian ad litem not so served at such guardian's or guardian ad litem's address last known to the trustee. Proof of service of the notice may be made by affidavit, as provided for service of summons in civil actions, or by written admission of service signed by the person served. The notice shall state the time and place for the return day, the name or names of the trustee or trustees who have filed the account, that the account has been filed, that the court is asked to settle such account, and that any objections or exceptions thereto must be filed with the clerk of said court on or before such return day.

Upon or before the return day, any beneficiary of the trust may file his written objections or exceptions to the account filed or to any action of the trustee or trustees set forth therein. The court may appoint either the legal guardian of a beneficiary, or a guardian ad litem to represent the interest of any such beneficiary who is an infant or of unsound mind or otherwise legally incompetent, or who is yet unborn or unascertained, and such beneficiary shall be bound by any action taken by such representative. Every unborn or unascertainable beneficiary shall be concluded by any action taken by the court for or against any living beneficiary of the same class or whose interests are similar to the interests of such unborn or unascertainable beneficiary.

At the same time, or at some later day fixed by the court if so requested by one or more of the parties, the court, without the intervention of a jury and after hearing all the evidence submitted, shall determine the correctness of the account and the validity and propriety of all actions of the trustee or trustees set forth therein including the purchase, retention and disposition of any of the property and funds of the trust, and shall render its decree either approving or disapproving the same or any part thereof, and, in addition, may surcharge the trustee or trustees for all losses, if any, caused by negligent or willful breaches of trust.

The decree so rendered shall be deemed final, conclusive and binding upon all the parties interested including all incompetent, unborn and unascertained beneficiaries of the trust, subject only to the right of appeal hereinafter stated.

The decree so rendered shall be a final order from which any party in interest may appeal as in civil actions to the district court of the state of Montana.

This chapter shall not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, trusts created by judgment or decree of a federal court or of the district court when not sitting in probate, liquidation trusts or trusts for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions; nor shall this chapter apply to executors, administrators or guardians.

The settlor of any trust governed by this chapter may waive any or all of the provisions of this act requiring periodical statements to beneficiaries or may add additional duties in the instrument creating the trust; and any beneficiary entitled to an accounting under this act may waive such an accounting by a separate instrument delivered to the trustee or trustees.

History: En. Sec. 1, Ch. 24, L. 1969.

CHAPTER 6—EXTINGUISHMENT, REVOCATION AND VACATION OF TRUSTS—SUCCESSION

86-601. (7920) Trust—how extinguished.

Life Income

Where sole purpose and object of trust were payment of income for life to testator's wife, mother, sister and son, and such obligations were either fulfilled or no longer possible of fulfillment, trial court properly terminated trust. Testamentary Trust of Child, 153 M 349, 457 P 2d 447.

86-607. (7926) Repealed.

Repeal

Section 86-607 (Sec. 3051, Civ. C. 1895), relating to survivorship between co-trustees, was repealed by Sec. 11, Ch .297, Laws of 1974.

CHAPTER 7—MISCELLANEOUS TRUSTS

Section 86-701. Contract for prearranged funeral plan or related services—trust created.
86-703. Report of institution holding deposited money.
86-707. Charitable trusts—federal tax laws.

86-701. Contract for prearranged funeral plan or related services—trust created. In all cases when, prior to his death, a person, or someone in his behalf, makes a contract for the final disposition of his body, under which contract, pursuant to a prearranged funeral plan, personal property will be delivered upon his death or the professional services of a funeral director, embalmer, cemetery firm, or mausoleum-columbarium corporation will then be furnished, all money paid under such contract shall be held in trust for the purpose for which it was paid until the obligation is fulfilled according to its terms or, by mutual consent of both parties to the contract, said money is refunded to the proper party. Accruals of interest upon this money are subject to this same trust. Such a trust is not necessary for that part of the contract that involves the sale of a cemetery lot if title is passed at the time the cemetery firm receives payment for the cemetery lot.

History: En. Sec. 1, Ch. 232, L. 1953; amd. Sec. 1, Ch. 454, L. 1977.

Amendments

The 1977 amendment inserted "cemetery firm, or mausoleum-columbarium corporation" in the first sentence; added the last sentence; and made minor changes in phraseology and punctuation.

Effective Date

Section 2 of Ch. 454, Laws 1977 provided the act should be effective on its passage and approval. Approved April 19, 1977.

86-703. Report of institution holding deposited money. A banking institution, or savings or building and loan association, receiving money in trust under section 86-702, shall report to the department of business regulation before February 1 of each year, all amounts received and held in trust. This report shall show the name and address of each trustee and cestui que trust, the principal amount remaining and the interest or dividends paid on each such account.

History: En. Sec. 3, Ch. 232, L. 1953; amd. Sec. 144, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department of business regulation" for "superintendent of banks" in the first sentence; and made minor changes in phraseology.

86-707. Charitable trusts—federal tax laws. (1) Notwithstanding any provision to the contrary in the governing instrument or under any other law of this state and except as otherwise provided by court decree entered after the effective date of this act, the trustee of a trust, whenever created, which is or is treated as a private foundation or a split-interest trust as defined in sections 509 and 4947, respectively, of the Internal Revenue Code of 1954, as in effect on the effective date of this act, during the period it is, or is treated as, a private foundation or split-interest trust as so defined:

(a) shall not engage in any act of self-dealing as defined in section 4941(d) thereof;

(b) shall distribute the trust income for each taxable year at such time and in such manner as not to subject the trust to the tax on undistributed income imposed by section 4942 thereof;

(c) shall not, if section 4943 thereof is applicable, retain any excess business holdings as defined in subsection (c) of that section;

(d) shall not, if section 4944 thereof is applicable, make any investment in such manner as to subject the trust to tax under that section; and

(e) shall not make any taxable expenditure as defined in section 4945(d) thereof.

(2) The trustee of a trust, whenever created, which is, or is treated as, a private foundation or a split-interest trust as defined in sections 509 and 4947, respectively, of the Internal Revenue Code of 1954, as in effect on the effective date of this act, may amend the terms of the governing instrument to the extent necessary to bring the trust into conformity with the requirements for:

(a) termination of private foundation status in the manner described in section 507(b) thereof;

(b) exemption of the trust from the taxes imposed by sections 4941 to 4945, inclusive, thereof, including the addition of a power to invade principal to the extent necessary to meet the requirements of section 4942: or

(c) exclusion of the trust from private foundation status under section 509(a)(3) thereof, and for this latter purpose may release any power contained in the governing instrument, may reduce or limit the charitable organizations or classes of charitable organizations in whose favor a power to select may be exercised and may appoint new or additional trustees. If the trust is for the benefit of one or more named charitable organizations, the trustee shall first obtain the consent of those organizations before making any amendment under subparagraph (c).

History: En. 86-707 by Sec. 1, Ch. 332, L. 1974.

Compiler's Notes

Sections 507, 509, 4941 to 4945 and 4947 of the Internal Revenue Code of 1954, cited in this section, are compiled in the United States Code as Tit. 26, secs. 507, 509, 4941 to 4945 and 4947.

Title of Act

An act to conform charitable trusts and corporations which are private foundations within the meaning of the Internal Revenue Code with the requirements of section 508(E) of the Internal Revenue Code by restricting certain activities; providing for exceptions; and providing an effective date.

CHAPTER 8—MANAGEMENT OF INSTITUTIONAL FUNDS

Section 86-801. Definitions.
86-802. Endowment funds subject to appropriation and expenditure.
86-803. Donor's intention restricting expenditure of net appreciation.
86-804. Allowable investments.
86-805. Delegation of investment authority—advisory service.
86-806. Ordinary business care and prudence.
86-807. Release of restrictions in gift instrument.
86-808. Uniformity of construction.
86-809. Citation of act.

86-801. Definitions. In this act:

(1) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(2) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include

(a) a fund held for an institution by a trustee that is not an institution, or

(b) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(3) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(4) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(5) "Historic dollar value" means the aggregate fair value in dollars of

(a) an endowment fund at the time it became an endowment fund,

(b) each subsequent donation to the fund at the time it is made, and

(c) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.

The determination of historic dollar value made in good faith by the institution is conclusive.

(6) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

History: En. Sec. 1, Ch. 389, L. 1973.

Title of Act

An act to establish guidelines for the management and use of investments held by eleemosynary institutions and funds.

86-802. Endowment funds subject to appropriation and expenditure. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by section 6 [86-806]. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument or the charter of the institution.

History: En. Sec. 2, Ch. 389, L. 1973.

86-803. Donor's intention restricting expenditure of net appreciation. Section 2 [86-802] does not apply if the applicable gift instrument indi-

cates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," or "rents, issues or profits," or "to preserve the principal intact," or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after the effective date of this act.

History: En. Sec. 3, Ch. 389, L. 1973.

86-804. Allowable investments. In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or if the applicable law other than law relating to investment by a fiduciary, **may:**

(1) invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships or individuals, and obligations of any government or subdivision or instrumentality thereof;

(2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) include all or part of any institutional fund in any pooled or common fund maintained by the institution; and

(4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

History: En. Sec. 4, Ch. 389, L. 1973.

86-805. Delegation of investment authority—advisory service. Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may:

(1) delegate to its committees, officers or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;

(2) contract with independent investment advisers, investment counsel or managers, banks, or trust companies, so to act; and

(3) authorize the payment of compensation for investment advisory or management services.

History: En. Sec. 5, Ch. 389, L. 1973.

86-806. Ordinary business care and prudence. In the administration of the powers to appropriate appreciation, to make and retain investments and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long- and short-term needs of the institution in carrying out its educational, religious, charitable or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends and general economic conditions.

History: En. Sec. 6, Ch. 389, L. 1973.

86-807. Release of restrictions in gift instrument. (1) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(2) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability or impossibility of identification, the governing board may apply in the name of the institution to the appropriate court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(3) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable or other eleemosynary purposes of the institution affected.

(4) This section does not limit the application of the doctrine of cy pres.

History: En. Sec. 7, Ch. 389, L. 1973.

Separability Clause

Section 8 of Ch. 389, Laws 1973 read "If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable."

86-808. Uniformity of construction. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

History: En. Sec. 9, Ch. 389, L. 1973.

86-809. Citation of act. This act may be cited as the "Uniform Management of Institutional Funds Act."

History: En. Sec. 10, Ch. 389, L. 1973.

CHAPTER 9—TRUSTEES' POWERS ACT

Section 86-901. Severability.
86-902. Definitions.
86-903. Trust instruments—limitation—incorporation.
86-904. Powers of trustee.
86-905. Transfer of office prohibited.
86-906. Supervision by court.
86-907. Multiple trustees—majority and minority.
86-908. Effective date of provisions.
86-909. Uniformity—construction.
86-910. Short title.
86-911. Repealing.

86-901. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

History: En. 86-901 by Sec. 10, Ch. 297, L. 1974.

Compiler's Notes

Other states which have adopted the Uniform Trustees' Powers Act include: Idaho, Kansas, Mississippi, North Carolina, New Hampshire and Wyoming.

Title of Act

An act specifying the powers of trustees; providing an effective date; and repealing sections 86-327, and 86-607, R. C. M. 1947.

86-902. Definitions. As used in this act: (1) "Trust" means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; "trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court not sitting in probate, a liquidation trust, or a trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution, or other trust the nature of which does not admit of general trust administration.

(2) "Trustee" means an original, added, or successor trustee.

(3) "Prudent man" means a trustee who in investing, reinvesting, purchasing, acquiring, selling and managing property for another, shall exercise the judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of their capital. Within the limitations of the foregoing standard, and subject to any express provisions or limitations contained in any particular trust instrument, a trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate

obligations of every kind, and stocks, preferred or common, which men of prudence, discretion and intelligence acquire for their own account.

History: En. 86-902 by Sec. 1, Ch. 297, L. 1974.

86-903. Trust instruments—limitation—incorporation. (1) The trustee has all powers conferred upon him by the provisions of this act unless limited in the trust instrument.

(2) An instrument which is not a trust under section 1(1) [86-902(1)] may incorporate any part of this act by reference.

History: En. 86-903 by Sec. 2, Ch. 297, L. 1974.

86-904. Powers of trustee. (1) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent man would perform for the purposes of the trust including but not limited to the powers specified in subsection (3).

(2) In the exercise of his powers including the powers granted by this act, a trustee has a duty to act with due regard to his obligation as a fiduciary.

(3) A trustee has the power, subject to subsections (1) and (2):

(a) to collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made; and the assets may be retained even though they include an asset in which the trustee is personally interested or which is not otherwise a qualified investment;

(b) to receive additions to the assets of the trust from any source;

(c) to continue or participate in the operation of any business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(d) to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(e) to invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;

(f) to deposit trust funds in a bank, including a bank operated by the trustee;

(g) to acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(h) to make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(i) to subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differ-

ences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;

(j) to enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;

(k) to enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) to grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;

(m) to vote a security, in person or by general or limited proxy, and enter into voting trusts;

(n) to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) to sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise and retain any property received pursuant thereto;

(p) to hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;

(q) to insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;

(r) to borrow money from any source to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(s) to pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

(t) to pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(u) to allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(v) to pay any property distributable to a beneficiary under disability, without liability to the trustee, to the beneficiary or for use of the beneficiary either to his parent, his guardian, person with whom he resides or others;

(w) to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;

(x) to employ persons, including attorneys, auditors, investment advisers, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties;

(y) to prosecute or defend actions, claims or proceedings for the protection of trust assets and of the trustee in the performance of his duties;

(z) to execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee.

History: En. 86-904 by Sec. 3, Ch. 297, L. 1974.

86-905. **Transfer of office prohibited.** Except as provided in sections 5-1507 and 5-1508, the trustee shall not transfer his office to another or delegate the entire administration of the trust to a cotrustee or another.

History: En. 86-905 by Sec. 4, Ch. 297, L. 1974; amd. Sec. 9, Ch. 401, L. 1975.

Amendments

The 1975 amendment inserted "Except as provided in sections 5-1507 and 5-1508."

Effective Date

Section 10 of Ch. 401, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 2, 1975.

86-906. **Supervision by court.** (1) This act does not affect the power of a court of competent jurisdiction for cause shown and upon petition of the trustee or affected beneficiary and upon appropriate notice to the affected parties to relieve a trustee from any restrictions on his power that would otherwise be placed upon him by the trust or by this act.

(2) If the duty of the trustee and his individual interest or his interest as trustee of another trust, conflict in the exercise of a trust power, the power may be exercised only by court authorization, except as provided in sections 3(3)(a), (d), (f), (r), and (x) [86-904(3)(a), (d), (f), (r), and (x)], upon petition of the trustee. Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee.

History: En. 86-906 by Sec. 5, Ch. 297, L. 1974.

86-907. **Multiple trustees—majority and minority.** (1) Any power vested in three (3) or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise.

(2) If two (2) or more trustees are appointed to perform a trust, and if any of them is unable or refuses to accept the appointment, or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(3) This section does not excuse a co-trustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

History: En. 86-907 by Sec. 6, Ch. 297, L. 1974.

86-908. **Effective date of provisions.** Except as specifically provided in the trust, the provisions of this act apply to any trust established after the effective date of this act and to any trust asset acquired by the trustee after the effective date of this act.

History: En. 86-908, by Sec. 7, Ch. 297, L. 1974.

86-909. **Uniformity—construction.** This act shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. 86-909 by Sec. 8, Ch. 297, L. 1974.

86-910. **Short title.** This act may be cited as the "Montana Trustees' Powers Act."

History: En. 86-910 by Sec. 9, Ch. 297, L. 1974.

86-911. **Repealing.** Sections 86-327, and 86-607, R. C. M. 1947, are repealed.

History: En. 86-911 by Sec. 11, Ch. 297, L. 1974.

Effective Date

Section 12 of Ch. 297, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 25, 1974.

TITLE 87—UNEMPLOYMENT COMPENSATION

Chapter 1. The unemployment compensation law, 87-103 to 87-114, 87-116, 87-118, 87-120 to 87-124, 87-127 to 87-136, 87-138 to 87-140, 87-142, 87-145 to 87-149.

CHAPTER 1—THE UNEMPLOYMENT COMPENSATION LAW

Section 87-103. Benefits.
87-104. Duration of benefits.
87-105. Benefit eligibility conditions.
87-106. Disqualification for benefits.
87-107. Claims for benefits.
87-108. Procedure and appeals.
87-109. Contributions.
87-110. Period, election and termination of employer's coverage.
87-111. Unemployment compensation account—establishment and control.
87-112. Accounts and deposits.
87-113. Withdrawals.
87-114. Disbursement of funds if federal act becomes inoperative.
87-116. Agreements with railroad retirement board.
87-118. Divisions.
87-120. Administration—duties and powers of division.
87-121. Regulations and general and special rules.
87-122. Publication.
87-123. Personnel.
87-124. Records and reports.
87-127. Protection against self-incrimination.
87-128. State-federal co-operation.
87-129. Reciprocal benefit arrangements.
87-130. Acquisition of property.
87-131. Division to co-operate with other agencies.
87-132. State employment service.
87-133. Unemployment compensation administration account.
87-134. Reimbursement of fund.
87-135. Penalty and interest on past-due contributions.
87-136. Collection—reciprocity with other states in effecting collection of unpaid unemployment compensation taxes.
87-138. Refunds.
87-139. Lien for payment.
87-140. Summary or jeopardy assessment.
87-142. Limitation of fees.
87-145. Penalties—falsity or willful nondisclosure—violations by employer or agent—violation of act or regulations—wrongfully collecting benefits.
87-146. Representation in court.
87-147. Nonliability of state.
87-148. Definitions.
87-149. Definitions—continued.

87-103. Benefits. (a) Payment of benefits. Benefits are payable from the fund to any individual who is or becomes unemployed and eligible for benefits as is herein prescribed; provided, however, that wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094), or for services performed for an employer, as defined in said act, shall not be included for the purposes of determining eligibility or weekly benefit amount under this act. All benefits shall be paid through public employment offices

in the state of Montana, or other agencies designated by the division, in accordance with such rules and regulations as the division may prescribe.

(b) Weekly benefit amount. Any individual whose benefit year begins on or after July 1, 1971, shall receive as his weekly benefit amount, an amount equal to one twenty-sixth of his total wages for insured work paid during the calendar quarter of his base period in which his wages were highest. Such weekly benefit amount, if not a multiple of $1, shall be rounded to the nearest multiple of $1.

On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained shall be divided by 52 and the average weekly wage, rounded to the nearest cent, thus determined. Fifty percent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. Such maximum weekly benefit amount if not a multiple of $1, shall be computed to the nearest multiple of $1.

Beginning on July 1, 1975, the maximum weekly benefit amount shall be raised to 55% of the average weekly wage and beginning July 1, 1976, be raised to 60% of the average weekly wage.

The minimum weekly benefit amount shall be $12.

The division shall prepare and publish annually a benefit schedule in accordance with the provisions of this subsection.

(c) Qualifying wages. To qualify as an insured worker an individual must have been paid wages for insured work in the quarters of his base period, an amount totaling not less than 1½ times his base period high quarter wages.

(d) Duration of benefits. Any otherwise eligible individual shall be entitled during his benefit year to benefits for the total number of weeks appearing in the following table on the line which includes his ratio of total base period earnings to highest quarter base period earnings:

Ratio of Total Base Period Earnings to High Quarter	Weeks Duration of Benefits
0 to 1.75	12
1.76 to 1.95	14
1.96 to 2.15	16
2.16 to 2.35	18
2.36 to 2.55	20
2.56 to 2.75	22
2.76 to 2.95	24
2.96 or more	26

(e) Qualifying wages for regular benefits of newly covered workers during transition period on the basis of previously uncovered services—

(1) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection, the term "previously uncovered services" means services—

(A) Which were not employment as defined in 87-148(j)(9)(A) and (B) at any time during the 1-year period ending December 31, 1975; and

(B) Which—

(I) are agricultural labor (as defined in 87-148(i)(1)(A)) or domestic service (as defined in 87-148(i)(1)(B)); or

(II) are services performed by an employee of this state or a political subdivision thereof, as provided in 87-148(j)(6), or by an employee of a nonprofit educational institution which is not an institution of higher education, as provided in 87-148(j)(7), except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.

(f) Wage record. The division shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

(g) Benefits. All accrued benefits due and payable at the time of death to any deceased claimant shall be paid to the surviving spouse, or if there be no surviving spouse, then to the surviving children, or if there be no surviving children, then to the next of kin, without the necessity of any recipient obtaining letters testamentary or of administration.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977.

Amendments

The 1969 amendment made substantial deletions at the beginning and end of the first sentence in subsection (a); rewrote the benefits schedule, generally increasing the amounts payable; increased the maximum weekly benefit from $34 to $42; reduced the minimum weekly benefit from $15 to $13; rewrote subsection (c) to substitute the requirement of earnings totaling one and one-half times the high-quarter earnings for a requirement of $100 in earnings other than in the high quarter; and made numerous minor changes in phraseology.

The 1971 amendment completely rewrote subsections (b) and (c), slightly reducing benefits in the lower wage brackets and slightly increasing benefits in the higher wage brackets, reducing the minimum weekly benefit from $13 to $12, and increasing the maximum weekly benefit from $42 to $47 effective July 1, 1971 and to $52 effective January 1, 1972.

The 1973 amendment substituted "division" for "commission" throughout the section; deleted from subsection (b) first and second paragraphs setting minimum and maximum weekly benefit amounts; added new second, third and fourth paragraphs to subsection (b); substituted "in the quarters of his base period, other than the quarter in which his wages were highest, an amount" in subsection (c) for "in his base period"; and substituted "thirteen (13) times his weekly benefit amount" at the end of subsection (c) for "one and one-half (1½) times his high-quarter wages during his base period including the high quarter."

The 1975 amendment added the last sentence in the second paragraph of subsection (b).

The 1977 amendment substituted "the maximum weekly benefit amount shall be raised to 55% of the average weekly wage" in the third paragraph of subsection (b) for "the fifty per cent (50%) of the average weekly wage shall be raised to fifty-five per cent (55%)"; substituted "an amount totaling not less than 1½ times his base period high quarter wages" at the end of subsection (c) for "other than the quarter in which his wages were highest, an amount totaling not less than

thirteen (13) times his weekly benefit amount"; inserted subsections (d) and (e); redesignated former subsections (d) and (e) as (f) and (g); and made minor changes in phraseology, punctuation and style.

87-104. **Duration of benefits.** (a) Definitions. As used in this section, unless the context clearly requires otherwise—

(1) "Extended benefit period" means a period which

(A) begins with the third week after whichever of the following weeks occurs first:

(i) a week for which there is a national "on" indicator, or

(ii) a week for which there is a state "on" indicator; and

(B) ends with either of the following weeks, whichever occurs later:

(i) the third week after the first week for which there is both a national "off" indicator and a state "off" indicator, or

(ii) the thirteenth consecutive week of such period;

Provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) There is a "national 'on' indicator" for a week if the U.S. Secretary of Labor determines that for such week and for each of the immediately preceding 12 weeks, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and one-half per cent (4½%).

(3) There is a "national 'off' indicator" for a week if the U.S. Secretary of Labor determines that for such week and for each of the immediately preceding 12 weeks, the rate of insured unemployment (seasonally adjusted) for all states was less than four and one-half per cent (4½%).

(4) There is a "state 'on' indicator" for this state for a week if the division determines, in accordance with the regulations of the U.S. Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act—

(A) equaled or exceeded one hundred and twenty per cent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years, and

(B) equaled or exceeded four per cent (4%).

(5) There is a "state 'off' indicator" for this state for a week if the division determines, in accordance with the regulations of the U.S. Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act—

(A) was less than one hundred and twenty per cent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years, or

(B) was less than four per cent (4%).

(6) "Rate of insured unemployment," for purposes of paragraphs (4) and (5) of this subsection, means the percentage derived by dividing

(i) the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent thirteen (13) consecutive-week period, as determined by the division on the basis of his reports to the U.S. Secretary of Labor, by

(ii) the average monthly employment covered under this act for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen (13) week period.

(7) "Regular benefits" means benefits payable to an individual under this act or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(8) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(9) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(A) has received, prior to such week, all of the regular benefits that were available to him under this act or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week;

Provided, that, for the purposes of this subparagraph an individual shall be deemed to have received all of the regular benefits that were available to him although (i) as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits.

(B) his benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week; and

(C) (i) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the U.S. Secretary of Labor; and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(11) "State law" means the unemployment insurance law of any state, approved by the U.S. Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(b) Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits.—Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the division, the provisions of this act which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(c) Eligibility requirements for extended benefits.—An individual shall be eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the division finds that with respect to such week:

(1) he is an "exhaustee" as defined in subsection (a)(10),

(2) he has satisfied the requirements of this act for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(d) Weekly extended benefit amount.—The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(e) Total extended benefit amount. — The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) fifty per cent (50%) of the total amount of regular benefits which were payable to him under this act in his applicable benefit year;

(2) thirteen (13) times his weekly benefit amount which was payable to him under this act for a week of total unemployment in the applicable benefit year.

(f) (1) Beginning and termination of extended benefit period.—Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this state as a result of state and national "off" indicators, the division shall make an appropriate public announcement.

(2) Computations required by the provisions of subsection (a)(6) shall be made by the division, in accordance with regulations prescribed by the U.S. Secretary of Labor.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1. Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977.

Amendments

The 1969 amendment designated the former section as subdivision "(a)," substituted "subsection (2) or (3)" for "subsection (b) or (c)" at the end of subsection (a) (1); redesignated former subsections (a) (b) and (c) as subsections (1), (2) and (3) of subdivision (a); and added subdivision (b).

The 1971 amendment inserted subsection (a) (4) and made minor changes in style.

Chapter 3, Laws of 1975, added subdivisions (c) and (d); and made minor changes in punctuation.

Chapter 368, Laws of 1975, substituted "division" for "commission" throughout the section.

The 1977 amendment deleted provisions before and after the present section limiting the amount of benefits payable to any eligible individual in a benefit year and providing for extended benefits if individual was qualified; substituted "such week and for each of the immediately preceding 12 weeks" in subdivisions (a)(2) and (3) for "each of the three (3) most recent completed calendar months"; deleted "of the Virgin Islands or" before "of Canada" in subdivision (a)(10)(C); and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 3, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved February 6, 1975.

87-105. Benefit eligibility conditions. An unemployed individual shall be eligible to receive benefits for any week of total unemployment within his benefit year; only if the division finds that—

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulation as the division may prescribe, except that the division may, by regulation, prescribe that such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act, provide for registration and reporting for work by mail or through other governmental agencies.

(b) to (d) * * * [Same as parent volume.]

(e) An individual who received benefits during a benefit year must perform services for remuneration after the beginning of that year as a condition for receiving benefits in a second benefit year. The service may be in either covered or noncovered employment, however, the individual must have earned the lesser of three-thirteenths (3/13) of his high quarter of his second benefit year or six (6) times his weekly benefit amount of that same year.

(f) Benefits based on service in employment defined in section 87-148 (j)(6) and (7) and section 87-110(d) shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this act; except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract to perform services in any such capacity for any such educational institution for both such academic years or both such terms.

(g) Effective January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participation in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(h) Effective January 1, 1978, benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law (including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

(1) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977.

Amendments

The 1971 amendment added subdivisions (e) and (f); and made a minor change in phraseology.

Chapter 323, Laws 1975, substituted "division" for "commission" throughout the section; inserted "a public school of the state of Montana, or in" in the middle of subdivision (f); inserted "such public school" near the end of subdivision (f); and made minor changes in punctuation.

Chapter 368, Laws 1975, substituted "division" for "commission" throughout the section.

The 1977 amendment substituted "for an educational institution" in the middle of subdivision (f) for "in a public school of the state or Montana, or in an institution of higher education (as defined in section 87-148(n))"; substituted "educational institution" near the end of subdivision (f) for "public school, institution, or institutions of higher education"; added subdivisions (g) and (h); and made a minor change in phraseology.

Burden of Proof

Unemployment compensation claimant has the burden of showing that he is not disqualified from the receipt of benefits. Ollila v. Reeder, 148 M 134, 417 P 2d 473, 475.

Type of Work

Under statute providing that claimant must be available for work and seeking work, claimant was not eligible where all his applications were either for work in which he had no experience or work which he had no prospect of securing; claimant voluntarily removed himself from only then-existing labor market in area for which he was qualified by refusal to accept farm or ranch work because he despised it. Noone v. Reeder, 151 M 248, 441 P 2d 309.

Withdrawal from Labor Market

Claimant, who voluntarily withdrew himself from the active labor market, rendered himself ineligible to receive unemployment compensation benefits. Ollila v. Reeder, 148 M 134, 417 P 2d 473, 475.

87-106. Disqualification for benefits. Effective April 1, 1977, an individual shall be disqualified for benefits—

(a) If he has left work without good cause attributable to the employment:

(1) Until 6 weeks have elapsed from the effective date of his claim, with 6 weeks' reduction of his benefit duration; or

(2) Until he has performed services from the effective date of his claim other than self-employment for which remuneration is received equal to or in excess of his weekly benefit amount in 4 separate weeks

subsequent to the week in which the act causing the disqualification occurred, with 4 weeks' reduction of benefit duration, as determined by the division, provided he has not left this work under disqualifying circumstances.

(3) Except that he may not be disqualified if the division finds that he left his employment because of personal illness or injury not associated with misconduct or left his employment upon the advice of a licensed and practicing physician and, after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the division, provided he is otherwise eligible.

(b) If he has been discharged:

(1) For misconduct connected with his work, or affecting his employment:

(A) Until 8 weeks have elapsed from the effective date of his claim, with 8 weeks' reduction of his benefit duration; or

(B) Until he has performed services from the effective date of his claim other than self-employment for which remuneration is received equal to or in excess of his weekly benefit amount in 6 separate weeks subsequent to the week in which the act causing the disqualification occurred, with 6 weeks' reduction of benefit duration, as determined by the division, provided he has not left this work under disqualifying circumstances.

(2) For gross misconduct connected with his work or committed on the employer's premises, as determined by the division, for a period of 12 months.

(c) If he failed, without good cause, either to apply for available and suitable work when so directed by the employment office or the division or to accept suitable work offered to him which he is physically able and mentally qualified to perform, or to return to his customary self-employment (if any) when so directed by the division. Such disqualification shall continue for the week in which such failure occurred and until he has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 6 separate weeks subsequent to the date the act causing the disqualification occurred, with 6 weeks' reduction in benefit duration, as determined by the division, provided he has not left this work under disqualifying circumstances.

(1) In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) * * * [Same as parent volume.]

(d) For any week with respect to which the division finds that his total unemployment is due to a stoppage of work which exists because

of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the division that—

(1) and (2) * * * [Same as parent volume.]

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the division, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

(e) For any week with respect to which he is receiving or has received payment in the form of—

(1) Wages in lieu of notice or separation or termination allowance;

(2) Compensation for disability under the Workers' Compensation Law or the Occupational Disease Law of this or any other state or under a similar law of the United States or under the social security disability law, provided, however, that when an injured claimant has ceased to draw compensation benefits and shall have returned to the labor market, he shall then be entitled to receive unemployment compensation benefits under this title, if he shall be otherwise qualified. Provided further, that compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this title, provided the recipient has returned to the labor market and is otherwise qualified;

(3) Benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States, if such benefits are paid pursuant to section 87-129.

Receipt of any wages, compensation or benefits as set forth in subsection (1), (2), or (3) above, after payment of unemployment benefits, and with respect to the same week for which unemployment benefits were received, will thereupon require such individual to repay such unemployment benefits and the division may collect such unemployment benefits in the same manner as provided for collection of benefits under section 87-145 (d).

(f) During the school year (within the autumn, winter and spring seasons of the year) or the vacation periods within such school year or during any prescribed school term if claimant is a student regularly attending an established educational institution. Notwithstanding any other provisions in this subsection, no otherwise eligible individuals shall

be denied benefits for any week because he is in training approved by the division, nor shall such individual be denied benefits with respect to any week in which he is in training approved by the division by reason of the application of provisions in subsection (c) of this section or the application of provisions in section 87-105 (c).

(g) If his principal occupation is self-employment.

(h) A disqualification pursuant to the provisions of this section may not be confined to a single benefit year.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977.

Amendments

The 1965 amendment inserted "in excess of one hundred dollars ($100.00) per calendar month" in the first sentence of subd. (h); substituted "retired individual" for "individual after such retirement" near the beginning of the present third sentence of subd. (h); inserted "and entitled to receive retirement compensation," following "individual is retired" in the present third sentence of subd. (h); and made a minor change in punctuation.

The 1967 amendment inserted in subdivision (e) (3) a second paragraph reading: "Compensation as set forth in subsection (2) above, which is received as a lump-sum payment for a permanent disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving benefits under this act for any week except the one in which the lump-sum payment is made, providing recipient has earned sufficient new wage credits following settlement."

The 1969 amendment, in subdivision (a), substituted "nor" for "or" in the first sentence; in the second paragraph of item (e) (3), substituted "the date of injury" for "settlement"; and in subdivision (h), substituted "87-103 and 87-105" for "87-103 or 87-105."

Chapter 38, Laws of 1971, added the two provisos to subdivision (e) (2); and deleted the paragraph inserted in subdivision (e) (3) by the 1967 amendment.

Chapter 415, Laws of 1971, included the changes made by Ch. 38; deleted the second sentence of subdivision (a); deleted the second paragraph of subdivision (b) (2); added the second sentence to subdivision (f); deleted former subdivisions (g) and (j); redesignated former subdivisions (h) and (i) as subdivisions (g) and (h); deleted "and no benefit * * * in good faith" after "87-105" in the first sentence of subdivision (g), formerly subdivision (h); deleted the last sentence of subdivision (h), formerly subdivision (i); and made a minor change in punctuation.

Chapter 369, Laws of 1973, substituted references to the division for references to the commission throughout the section; substituted "receiving" for "entitled to" near the beginning of subsection (g); substituted "which when prorated on a weekly basis, exceeds the average weekly benefit amount paid during the last fiscal year" for "in excess of one hundred dollars ($100.00) per calendar month" in the first sentence of subsection (g); and made a minor change in arrangement.

Chapter 498, Laws of 1973, substituted references to the division for references to the commission; added the phrase following the semicolon in subsection (a); and inserted subsection (a)(1).

The 1975 amendment substituted "exceeds two (2) times the average weekly benefit" in subdivision (g) for "exceeds the average weekly benefit"; and inserted "does not apply to retired federal personnel, and" in the last sentence of subdivision (g).

The 1977 amendment inserted "Effective April 1, 1977" at the beginning of the section; deleted "for a period of not less than two (2) nor more than five (5) weeks (in addition to and immediately following the waiting period), as determined by the division according to the circumstances in each case; but, he shall not be disqualified if the division finds that" from the end of the introductory paragraph of subdivision (a); inserted subdivisions (a)(1) and (a)(2); redesignated former subdivision (a)(1) as subdivision (a)(3); deleted "for a period of not less than two (2) nor more than nine (9) weeks (in addition to and immediately following the waiting period), as determined by the division in each case according to the seriousness of the misconduct" from the end of subdivision (b)(1); inserted subdivisions (b)(1)(A) and (b)(1)(B); substituted the second sentence

of subdivision (c) for a sentence reading "Such disqualification shall continue for the week in which such failure occurred and for not less than two (2) nor more than five (5) weeks in addition to the waiting week which immediately follow such week as determined by the division according to the circumstances in each case"; substituted "Workers' Compensation Law" for "Workmen's Compensation Law" near the beginning of subdivision (e)(2); inserted "or under the social security disability law" near the beginning of the first sentence of subdivision (e)(2); substituted present subdivision (g) for one reading "Where retired and receiving retirement compensation paid in whole or in part from funds furnished by an employing unit, which when prorated on a weekly basis, exceeds two (2) times the average weekly benefit amount paid during the last fiscal year, such disqualification to be applied as follows: All wages earned by such individual in the employment from which he has been retired shall not be considered or included in determining his wage credits or weekly benefit amount under sections 87-103 and 87-105. This disqualification does not apply to retired federal personnel, and does not extend to the receipt of benefits under the Federal Social Security Act, as amended"; substituted present subdivision (h) for one reading "For any week wherein claimant leaves her most recent employment during pregnancy, and due to such pregnancy, and such disqualifications shall continue through the period of pregnancy unless claimant presents evidence of her physical ability to work at such employment. At any time after the seventh month of pregnancy a claimant, to establish eligibility, must present evidence of physical ability to work at such employment. Further, at any time during the first two (2) months following childbirth, a clamant, to establish eligibility, must present evidence of her physical ability to work at such employment. In any of the cases set forth hereinbefore, such evidence of eligibility must be in the form of certificate of a duly licensed physician that such claimant is physically able to work at her most recent employment, and such evidence must be presented as often as requested by the division"; and made minor changes in phraseology, punctuation and style.

Misconduct

The court properly concluded that refusal to train a new employee and refusal to work overtime constituted simple misconduct under this statute. Gaunce v. Board of Labor Appeals, — M —, 524 P 2d 1108.

Prior Workmen's Compensation Settlement

Claimant was barred from receiving unemployment compensation benefits by reason of prior lump-sum workmen's compensation settlement during the period which lump-sum settlement was intended to cover. Keller v. Reeder, 149 M 322, 425 P 2d 830.

87-107. Claims for benefits. (a) Filing. Claims for benefits shall be made in accordance with such regulations as the division may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the division to each employer without cost to him.

(b) Initial determination. A representative designated by the division, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeals referee who shall make his decision with respect thereto in accordance with the procedure prescribed in subsection (e) of this section. No determination or redetermination of an initial or additional claim shall be made under this section unless five (5) days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons

therefor. The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor.

(c) Finality of determination. A determination or redetermination shall be deemed final unless an interested party entitled to notice thereof applies for reconsideration of the determination or appeals therefrom within five (5) days after delivery of such notification or within seven (7) days after such notification was mailed to his last known address provided, that such period may be extended for good cause.

(d) Appeals referee. To hear and decide disputed claims, the division shall appoint such impartial appeals referee as are necessary for the proper administration of this act, consisting of salaried examiners selected in accordance with section 87-123. No person shall participate on behalf of the division in any case in which he is an interested party. The division may designate alternates to serve in the absence or disqualification of an appeals referee.

(e) Notice of decision of appeals referee and time for appeal. After a hearing an appeals referee shall make findings and conclusions promptly and on the basis thereof affirm, modify, or reverse the deputy's determination or redetermination. Each interested party shall be furnished promptly a copy of the decision and the supporting findings and conclusions; this decision shall be final unless further review is initiated pursuant to subsection (g) of this section within five (5) days after delivery of such notification or within seven (7) days after such notification was mailed to his last known address, provided, that such period may be extended for good cause.

(f) Prompt payment of claims. Notwithstanding any provision in subsection (b), (c) or (g) of this section, benefits shall be paid promptly in accordance with a determination or redetermination under this section, or the decision of an appeals referee, the board of labor appeals or a reviewing court under subsection (g) of this section upon the issuance of such determination, redetermination or decision (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect thereto in subsection (g) of this section, as the case may be, or the pendency of any such application, filing, or petition), unless and until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision.

If a deputy's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee, or by the board of labor appeals, or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board of labor appeals, such benefits shall be paid promptly regardless of any further appeal or the disposition of such appeal and no injunction, supersedeas, stay or other writ or process suspending the payment of such benefits shall be issued by the board or any court.

Benefits shall not be paid for any weeks of unemployment involved in such modification or reversal that begins after such final decision.

(g) Appeal to board of labor appeals and judicial review. Any interested party dissatisfied with a decision of an appeals referee is entitled to appeal to the board of labor appeals. The division will promptly transmit all records pertinent to the appeal to the board. When a decision is rendered by the board with copies of such decision to all interested parties, including the division, that decision shall become final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within thirty (30) days of the date of mailing of the board's decision to his last known address.

History: En. Sec. 6(a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977.

Amendments

The 1973 amendment substituted "division" for "commission" throughout the section; substituted "appeals referee" for "appeal tribunal" in the latter part of the first sentence in subsection (b) and in three places in subsection (d); deleted from the end of the first sentence in subsection (b) clauses providing for referral to and decision by the commission in work-stoppage cases; inserted a new second sentence in subsection (b); redesignated the former fourth sentence of subsection (b) as subsection (c); deleted from the end of subsection (b) two sentences providing for suspension of benefits pending appeal from an adverse decision; deleted from the end of the sentence redesignated as subsection (c) a clause providing for payment or denial of benefits in accordance with the decision; added to the end of subsection (c) the clause providing for extension of time for appeal; deleted former subsection (c), relating to decisions by appeal tribunals; deleted from the first sentence of subsection (d) clauses providing for three-member tribunals; deleted from subsection (d) two final sentences relating to absence of members of an appeal tribunal; deleted former subsection (e), relating to review by the commission; added new subsections (e), (f) and (g); and made minor changes in phraseology.

The 1975 amendment substituted in subsection (b) "in subsection (e) of this section" for "in subsection (c) of this section"; and made minor changes in phraseology.

The 1977 amendment deleted "but if such decision is finally modified or reversed to deny benefits, no employer's account shall be charged with benefits so paid" at the end of the first sentence of the second paragraph of subsection (f).

87-108. Procedure and appeals. (a) Procedure. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the division or the board of labor appeals for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules or procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. The division shall have continuing jurisdiction over all claims filed for benefits to revise, modify, alter, cancel and amend all orders, findings and determinations made therein at any time and shall not lose such jurisdiction unless and until the jurisdiction of such claim and subject matter thereof has been taken by a court of competent jurisdiction in a proceedings filed therein as provided for in subsection (d) of this section.

(b) Witness fees. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the division. Such fees shall be deemed a part of the expense of administering this act.

(c) Appeal to courts. Any decision of the board of labor appeals in the absence of an appeal therefrom as herein provided shall become final 30 days after the date of notification or mailing thereof, except in the case of the division when such decision becomes final 20 days following the board's decision, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the board of labor appeals. The division shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such action by an attorney employed by the division or at the division's request, by the attorney general.

(d) Court review. Within 30 days after the date of notification or mailing of the decision of the board of labor appeals, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides and in which action any other party to the proceeding before the board of labor appeals shall be made a defendant. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon the administrator of the division or the administrator's designee and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the division shall forthwith mail one such copy to each such defendant. With its answer, the division shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with the board of labor appeals' findings of fact and decision. The board of labor appeals may also in its discretion, certify to such court questions of law involved in any decision by it. Whenever the division seeks review of a decision of the board of labor appeals, all interested parties shall be served with a copy of its petition together with all documents filed with the court. In any judicial proceeding under this section, the findings of the board of labor appeals as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such action, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law of this state. An appeal may be taken from the decision of the said district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this act, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the board of labor appeals and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the division shall enter an order in accordance with such determination.

History: En. Sec. 6(f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 24 and once by Ch. 201. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1975 amendment substituted "division" or "board of labor appeals" for "commission" throughout the section; and made minor changes in phraseology.

Chapter 24, Laws of 1977 extended the time before a decision of the board of labor appeals becomes final in subsection (c) from 10 days to thirty days after notification or mailing of the decision; and substituted "30 days after the date of notification or mailing of the decision of the board of labor appeals" near the beginning of subsection (d) for "ten days after the decision of the board of labor appeals."

Chapter 201, Laws of 1977, inserted "or the board of labor appeals" in the first sentence of subsection (a); changed the time before a decision becomes final from 10 to 30 days; inserted the exception in the first sentence of subsection (c); deleted references to the board of labor appeals after references to division in the second sentence of subsection (c); deleted "against the board of labor appeals for the review of its decision" after "county in which said party resides" in the first sentence of subsection (d); substituted "the administrator of the division or the administrator's designee" in the second sentence of subsection (d) for "a member of the board of labor appeals or its designate for service of process"; substituted "division" for "board of labor appeals" in the second and third sentences of subsection (d); inserted the fifth sentence of subsection (d); deleted "division or" before "board of labor appeals" in the ninth sentence of subsection (d); deleted a last sentence of subsection (d) reading "A petition for judicial review shall not act as a supersedeas or stay unless the division or board of labor appeals shall so order"; and made minor changes in phraseology and style.

Findings of Commission

Finding of unemployment compensation commission that claimant was not available for and seeking work as required by section 87-105 was proper where the evidence showed that claimant quit his job to protect his social security retirement benefits; he knew that his employer would not rehire him if he failed to report off from work; he went to Minnesota to take a rest; and he failed to seek full-time employment. Ollila v. Reeder, 148 M 134, 417 P 2d 473, 475.

Scope of Judicial Review

Under that portion of statute relating to court review, findings of fact by commission, if supported by substantial evidence, are conclusive and confine scope of judicial review to questions of law. Noone v. Reeder, 151 M 248, 441 P 2d 309; Gaunce v. Board of Labor Appeals, — M —, 524 P 2d 1108.

87-109. Contributions. (a) Payment. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages, as defined in section 87-149(c), paid for employment (as defined in this act) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the division for the fund in accordance with such regulations as the division may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half (½) cent or more, in which case it shall be increased to one (1) cent.

(b) Rate of contribution.

(1) Each employer shall pay contributions at the rate of three and one-tenth per centum (3.1%) of wages, as defined in section 87-149(c) paid by him with respect to such employment, except as provided in subsection (c) of this section.

Nonprofit organizations defined in section 501(c)(3) of the federal internal revenue code and which are exempt from tax under section 501 (a) of such code may elect to make payments in lieu of contributions.

A group of nonprofit organizations may elect with the approval of the division to act as a group in fulfilling the requirements of this subsection or of this act.

The state and its political subdivisions, effective January 1, 1977, for the rate year as defined in subsection (b)(4) of this section, may elect to make payments in lieu of contributions or pay under a special contributions plan established for governmental entities only.

(2) Eligible employers electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus one-half (½) of the amount of extended benefits paid to individuals based on wages paid by such employing unit. After December 31, 1978, governmental entities shall pay the full amount of extended benefits. If benefits paid an individual are based on wages paid by both such employer and one (1) or more other employers, the amount payable by such employer to the fund shall bear the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all his base period employers. If the base period wages of an individual include wages from more than one (1) such employer, the amount to be paid into the fund with respect to the benefits paid to such individual shall be prorated among the liable employers in proportion to the wages paid to such individual by each such employer during the base period. The amount of payment required from such employers shall be ascertained by the division quarterly and shall become due and payable by such employer quarterly as directed in this act. Penalty and interest for delinquency shall be assessed such employers as specified in section 87-135.

(A) A nonprofit organization which elects to make payments in lieu of contributions into the unemployment compensation fund as provided in this subsection is not liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in 87-148(j)(7)(A)(3) to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

(3) Any nonprofit organizations as defined in subsection (b)(1) of this section and governmental entities electing to become liable for payments in lieu of contributions must file with the division a written notice of its election not later than thirty (30) days immediately following the date of the determination of subjectivity to this act. This election shall be for a period of not less than two (2) years.

(A) Any nonprofit organization or governmental entity may terminate its election to make payments in lieu of contributions after two (2) years from the effective date of such election by filing a written notice with the division not later than thirty (30) days prior to the beginning of the taxable year for which such termination is effective.

(B) Any nonprofit organization defined in subsection (b)(1) of this section or governmental entity which has been paying contributions for at least two (2) taxable years may change to payments in lieu of con-

tributions by filing with the division a written notice to that effect within thirty (30) days before the beginning of the taxable year for which the change is effective.

(C) If the nonprofit organization or governmental entity is delinquent in making payments in lieu of contributions, the division may terminate the election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

(4) Payments in lieu of contributions by the state and its political subdivisions shall be an amount equivalent to the amount of benefits paid to individuals based on wages paid by the state and its political subdivisions. The method of determining benefits attributable shall be the same as that set forth in subsection (b)(2) of this section.

(A) Employing units covered under this act after December 31, 1974, shall make payments equal to four-tenths percent (.4%) of total wages paid employees for services in employment during the calendar quarter.

(B) The rates shall be adjusted annually as follows: Each governmental entity shall be assigned a rate based upon (1) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods which are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31, and (2) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median. The rates shall be so fixed using the median that they will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(C) New governmental entities electing to pay contributions shall be assigned the median rate for the year in which they become subject.

(D) At no time may the minimum rate be less than .1% or the maximum be greater than 1.5%, rates to be graduated at one-tenth intervals.

(E) The computed rate shall be effective July 1 of each year.

(c) Experience rating.

The division shall for each calendar year, classify employers in accordance with their actual contributions and unemployment experience and shall determine for each employer the experience rate which shall apply to him throughout the calendar year. The division shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment.

In making such classification, the division shall take account, each of the following factors relating to the unemployment hazard shown by each employer on the basis of (1) number of years the employer has paid contributions; (2) average quarterly percentage declines in total payrolls for the last 3 fiscal years ending June 30; and (3) average

annual net percentage declines in total payrolls for the last 3 fiscal years ending June 30, the computation date.

Wages shall be adjusted in the determination of the annual and quarterly decrease percentages of any employer's payroll in whose establishment there was in any year in the qualifying period of such employer, a stoppage of work due to a strike which caused a decrease in such employer's payroll of such magnitude that his actual quarterly and annual payroll caused by such a decrease or decreases when used with other annual and quarterly payroll decreases, if any, in his qualifying period would cause an increase in such employer's contribution rate. An employer's adjusted quarterly payroll for that quarter in which such stoppage of work existed shall be determined by multiplying each such payroll or adjusted payroll for the quarter immediately preceding the quarter in which such stoppage of work existed by the average quarterly variation ratio. The average quarterly variation ratio shall be computed by

(1) dividing the payroll, or if adjusted, the adjusted payroll, for that quarter in each of the prior years of an employer's qualifying period which corresponds to the respective quarter in which a stoppage of work due to a strike existed, by the payroll or adjusted payroll for the respective quarter immediately preceding such corresponding quarter, and

(2) totaling the ratio thus obtained and dividing by the number of such ratios.

EMPLOYER CLASSIFICATIONS:

Employers, for the second calendar quarter of the calendar year 1975 and thereafter, shall be grouped into fourteen (14) classes, to be designated as classes I through XIV, respectively, in accordance with their experience factor.

Each employer shall be in the class listed below on the same horizontal line on which his experience factor appears, and each qualified employer shall pay the contribution rate assigned to his class pursuant to the provisions of reserve to total wages.

Employer's Experience Factor	Class
30-29	I
28-27	II
26-25	III
24-23	IV
22-21	V
20-19	VI
18-17	VII
16-15	VIII
14-13	IX
12-11	X
10-9	XI
8-7	XII
6-0	XIII
Age	XIV

RESERVE TO TOTAL WAGES—CLASS RATES:

Class rates shall be assigned based upon the percent of average trust fund balance of the twelve (12) month period prior to the computation date to total wages in covered employment for the same period.

CLASS RATES

Reserve Percent of Total Wage	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7
At least 2.50%	.5	.7	.9	1.1	1.3	1.5	1.7
2.25 to 2.49%	.7	.9	1.1	1.3	1.5	1.7	1.9
2.00 to 2.24%	.9	1.1	1.3	1.5	1.7	1.9	2.1
1.75 to 1.99%	1.1	1.3	1.5	1.7	1.9	2.1	2.3
1.50 to 1.74%	1.3	1.5	1.7	1.9	2.1	2.3	2.5
1.25 to 1.49%	1.5	1.7	1.9	2.1	2.3	2.5	2.7
1.00 to 1.24%	1.7	1.9	2.1	2.3	2.5	2.7	2.9
Less than 1.00%	3.1	3.1	3.1	3.1	3.1	3.1	3.1

Reserve Percent of Total Wage	Class 8	Class 9	Class 10	Class 11	Class 12	Class 13	Class 14
At least 2.50%	1.9	2.1	2.3	2.5	2.7	2.9	3.1
2.25 to 2.49%	2.1	2.3	2.5	2.7	2.9	3.1	3.1
2.00 to 2.24%	2.3	2.5	2.7	2.9	3.1	3.1	3.1
1.75 to 1.99%	2.5	2.7	2.9	3.1	3.1	3.1	3.1
1.50 to 1.74%	2.7	2.9	3.1	3.1	3.1	3.1	3.1
1.25 to 1.49%	2.9	3.1	3.1	3.1	3.1	3.1	3.1
1.00 to 1.24%	3.1	3.1	3.1	3.1	3.1	3.1	3.1
Less than 1.00%	3.1	3.1	3.1	3.1	3.1	3.1	3.1

The division shall determine the experience rate applicable to each employer for any calendar year subject to the following limitations:

(1) Each employer's rate shall be three and one-tenth per centum (3.1%) unless and until there have been three (3) years prior to the computation date throughout which the employer has paid contributions at the maximum tax rate set by law for each of such years and has reported and paid contributions during each of the three (3) calendar years immediately preceding the computation date and with respect to such three (3) calendar years has filed all contribution reports prescribed by the division and paid all contributions due with respect to the three (3) calendar years before March 31 of the rate year. Upon payment of past-due contributions the division shall, for the current year, compute a rate for the next succeeding quarter following the payment.

(2) At no time may the minimum classified contributions rate be less than .5% or the maximum be greater than 3.1%, rates to be graduated at two-tenth intervals, as shown on the class rate schedule.

(3) The division shall by regulation adopt such procedures as may be necessary for the substitution, merging or acquisition of an employer account by an employing unit, and the transfer of such employer account, rights, contributions, payroll experience and ratings to the successor employing unit or units.

(4) The division shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the division for a redetermination or hearing thereon within thirty (30) days after receipt of such notice.

(5) "Annual total payroll" means the total of the four (4) quarters of total payrolls of an employer preceding the computation date as fixed herein.

(d) Payment of contributions shall apply only to wages paid up to and including $4,200 by an employer to an employee with respect to employment during the calendar years 1972, 1973, 1974 and the first calendar quarter of year 1975. For the second calendar quarter of the calendar year 1975 and thereafter the taxable wage base shall be established for each year based upon the reserve per cent of total wages or the amount of taxable wage base specified in the federal unemployment tax act, whichever is higher. Effective January 1, 1978, and thereafter the Federal Unemployment Tax Act provides that contributions shall be paid on wages up to and including $6,000 per employee.

Reserve Percent of Total Wages	Taxable Wage Base
2.50% and above	$4,200.00
2.25 to 2.49%	4,400.00
2.00 to 2.24%	4,600.00
Less than 2.00%	4,800.00

(e) Contribution appeals.

Any person aggrieved by any decision, determination, or redetermination of the division involving contribution liability, contribution rate, application for refund or the charging of benefit payments to employers making payment in lieu of contributions is entitled to a review by the division or its authorized representative, hereinafter referred to as a deputy. The decision of the deputy shall be deemed to be the decision of the division. The division or the deputy conducting the review may refer the matter to an appeal referee, may decide the application for review on the basis of such facts and information as may be obtained or may hear argument to secure further facts. After such review, notice of the decision shall be given to the employing unit. Such decision made pursuant to such review shall be deemed to be the final decision of the division unless the employing unit or any other such interested party, within five (5) calendar days after delivery of such notification or within seven (7) calendar days after such notification was mailed to his last known address, files an appeal from this decision. Such appeal will be referred to an appeal referee who shall make his decisions with respect thereto in accordance with the procedure prescribed in section 87-107(c).

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117,

L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977.

Amendments

The 1969 amendment made numerous changes in phraseology; rewrote subdivision (b) (1) which formerly provided for employer contributions of 1.8% for 1937 employment and 2.7% for subsequent employment; in subsection (c), deleted an apparently superfluous third paragraph which is shown in brackets in the parent volume; raised the rates stated in the fourth paragraph, now the third paragraph, from 1.5% to 1.6%; in subdivision (c) (1), substituted 3.1% rate for 2.7% rate, "date" for "rate" and "maximum tax rate set by law for each of such years" for "rate of two and seven-tenths (2.7) per centum"; in subdivision (c) (2), substituted 1969 rates for separate rates for 1947 and thereafter and 1953 and thereafter; in subdivision (c) (4), substituted 3.1% rate for 2.7% rate; in subdivision (c) (5), substituted reference to 1.6% and 3.1% rate for references to 1.5% and 2.7% rate; and inserted subdivision (c) (9).

The 1971 amendment added the second paragraph to subdivision (b) (1); added subdivisions (2), (3) and (4) to subsection (b); substituted "total payrolls" for "taxable payrolls" in clause (1) in the second paragraph of subsection (c), and also in two places in subdivision (c) (8); substituted "first calendar quarter of calendar year 1972" for "second calendar quarter of calendar year 1969" in the third paragraph of subsection (c); inserted "(except those employers making payments in lieu of contributions)" in the third paragraph of subsection (c); reduced the rate specified at the end of the third paragraph of subsection (c) from 1.6% to 1.5%; reduced the time required by subdivision (c) (1) from five to three years; added "and has reported and paid contributions during each of the three (3) calendar years immediately preceding the computation date and with respect to such three (3) calendar years has filed all contribution reports prescribed by the commission and paid all contributions due with respect to the three (3) calendar years before March 31 of the rate year" to the end of the first sentence of subdivision (c) (1); added the second sentence to subdivision (c) (1); added the second sentence to subdivision (c) (3); deleted "No employer's rate shall be fixed below three and one-tenth (3.1) per centum whose benefit payments charged as most recent employer have, in the last three (3) years preceding the computation date, exceeded the amount of his contributions for those years" from the beginning of subdivision (c) (4); inserted "An employer whose benefit payments (charged as most recent employer) in the last three (3) years preceding the computation date exceeded the amount of his contributions for those years" at the beginning of subdivision (c) (4); deleted from the end of subdivision (c) (4) a clause reading "otherwise his rate for the ensuing calendar year shall be fixed at three and one-tenth (3.1) per centum"; reduced the average return rate specified in two places in subdivision (c) (5) from 1.6% to 1.5%; deleted from the end of subdivision (c) (7) a sentence reading "The provisions of section 87-107 applicable to appeals under claims procedure shall apply with like purpose and effect, and be applicable to hearings and request for redeterminations of classifications and rates of contribution filed by employers hereunder"; inserted subdivisions (A) and (B) in subdivision (c) (9); designated the latter part of former subdivision (c) (9) as subdivision (c) (9) (C); deleted "Wages in excess of three thousand dollars ($3,000.00)" at the beginning of subsection (d); added "preceding the year 1972" at the end of the first paragraph of subsection (d); added the second paragraph of subsection (d) and all of subsection (e); and made minor changes in phraseology and punctuation.

The 1973 amendment substituted "division" for "commission" throughout the section; substituted "501(c)(3) of the federal internal revenue code" for "87-148(j)(7)" and inserted "and which are exempt from tax under § 501(a) of such code" in the second paragraph of subdivision (b)(1); added the third paragraph to subdivision (b)(1); substituted "subsection (b)(1) of this section" for "section 87-148(j)(7)" at the beginning of subdivision (b)(3); deleted "for a period of not less than one year" from subdivision (b)(3); substituted the second sentence and paragraphs (A), (B) and (C) of subdivision (b)(3) for two sentences making the election nonterminable by the organization until after the next year but permitting the commission to terminate the election for delinquencies in payment; substituted the first two sentences in subsection (e) for a sentence providing for review of determinations by the commission or a deputy; and made minor changes in style and phraseology.

The 1975 amendments deleted "The amount of payments shall be paid in such manner as the division may prescribe" at the end of subdivision (b)(4); added subdivisions (A) to (C) in subdivision (b)(4); substituted "the experience factor" in the first paragraph of subsection (c) for "the rate of contributions"; substituted in the second paragraph of subsection (c) "(3) average quarterly percentage declines

in total payrolls for the last three (3) years prior to computation date" for "(3) charge-backs to the individual employer account upon the last employer basis"; deleted a third paragraph in subdivision (c) which read: "The rates for the first calender quarter of calendar year 1972 and thereafter, except as hereinafter provided, shall be so fixed that they would, if applied to all employers (except those employers making payments in lieu of contributions) and their total taxable annual payrolls for the preceding calendar year, have yielded total paid contributions equaling approximately one and five-tenths per centum (1.5%) of the total of all such payrolls"; inserted the present third paragraph in subsection (c), including subdivisions (1) and (2) and the paragraphs and tables designated "EMPLOYER CLASSIFICATIONS:" and "RESERVE TO TOTAL WAGES—CLASS RATES:"; in the paragraph immediately after the "CLASS RATES" table substituted "the experience factor" for "the contribution rate"; deleted subdivisions (c)(3) to (5); deleted former subdivision (c)(9); redesignated former subdivisions (c)(6) to (8) as (3), (4) and (5); at the end of subdivision (c)(3) substituted "payroll" for "benefit"; substituted in subsection (d) "calendar year 1972" for "calendar year 1972 and thereafter"; and added the last part of the second paragraph of subsection (d) beginning with "1973, 1974 and the first calendar." For prior version, see parent volume and 1969 to 1973 amendment notes.

The 1977 amendment substituted the fourth paragraph of subdivision (b)(1) for "the state and its political subdivisions specifically covered by this act and those electing coverage shall make payments in lieu of contributions"; substituted "Eligible employers electing" at the beginning of subdivision (b)(2) for "Employers required or eligible to elect"; inserted the second sentence in subdivision (b)(2); inserted subdivision (b)(2)(A); inserted the references to governmental entities throughout subdivision (b)(3); deleted a sentence at the beginning of subdivision (b)(4)(A) reading "From the date of subjectivity to this act through December 31, 1974, payments shall equal three-tenths per cent (.3%) of total wages paid employees for services in employment during the calendar quarter"; substituted subdivision (b)(4)(B) for adjustment of rates after 3 calendar years at a rate equal to a percentage derived by dividing the total sum of benefits charged to the employer's account for all past periods which counted as completed transactions on September 30 immediately preceding the computation date by total wages paid through December immediately preceding that date; substituted subdivision (b)(4)(C) for provisions that when an employer became eligible for a rate adjustment the division was required to determine whether total payments were more or less than the sum of benefits charged to the employer's account, and an employer paying less than benefit charges was liable to pay the difference within 30 days, but an employer which had overpaid might, at the discretion of the division, either receive a refund or have the amount credited to the next year's payment; inserted subdivisions (b)(4)(D) and (E); substituted the second paragraph of subsection (c) for provisions which stated the factors to be taken into account as "(1) average annual net percentage declines in total payrolls for the last three (3) years prior to computation date; (2) number of years the employer has paid contributions; and (3) average quarterly percentage declines in total payrolls for the last three (3) years prior to computation date; substituted "6-0" for "6-(-10) in the left column of the "EMPLOYER'S EXPERIENCE FACTOR" table in subdivision (c)(2); inserted the line dealing with "1.00 to 1.24%" in the "CLASS RATES" table in subdivision (c)(2); substituted subdivision (2) following the Class Rates chart for provisions establishing classified contribution rates for the year 1969 and thereafter; deleted the former first sentence of subsection (d) making the provisions of this act applicable only to the first $3,000 of wages paid in any year prior to 1972; added the last sentence of subsection (d); and made minor changes in phraseology and style.

Separability Clause

Section 5 of Ch. 4, Ex. Laws 1969 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair, or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

Repealing Clause

Section 6 of Ch. 4, Ex. Laws 1969 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 7 of Ch. 4, Ex. Laws 1969 read "Sections 1, 2 and 3 of this act shall be in full force and effect on and after April 6, 1969, and sections 1, 2 and 3 shall apply to all benefit years beginning on and after April 6, 1969, and the insured status of all claimants who have a benefit year current on or after April 6, 1969, shall be

redetermined and benefits shall be paid in accordance with this provision, provided that no insured worker shall have his benefits reduced or denied by redetermination resulting from the application of this provision; section 4 of this act shall be in full force and effect on and after April 1, 1969."

Section 2 of Ch. 430, Laws 1975 read "This act is effective on April 1, 1975."

87-110. Period, election and termination of employer's coverage. (a) Any employing unit which is or becomes an employer subject to this act within any calendar year, shall be subject to this act during the whole of such calendar year, except that this subsection shall not apply to an employing unit electing coverage as provided for in subsection (c) of this section.

(b) Except as otherwise provided in subsection (c) of this section an employing unit shall cease to be an employer subject to this act only as of the first day of January, of any calendar year, only if it files with the division prior to the last day of February, of such year, a written application for termination of coverage, and the division finds that the total wages payable for employment by said employer in the preceding calendar year did not exceed five hundred dollars ($500). For the purpose of this subsection, the two (2) or more employing units mentioned in paragraph (2) or (3) of section 87-148 (i) shall be treated as a single employing unit.

(c) An employing unit not otherwise subject to this act, or any employing unit for which services are performed that do not constitute employment as defined in this act, may file with the division, a written election that all such services performed by individuals in its employ in one (1) or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this act for not less than two (2) calendar years. Upon the written approval of such election by the division, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1, of any calendar year subsequent to such two (2) calendar years only if at least thirty (30) days prior to such first day of January such employing unit has filed with the division a written notice to that effect.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973; amd. Sec. 2, Ch. 323, L. 1975.

Amendments

The 1969 amendment deleted "there were no twenty (20) different days, each day being in a different week within the preceding calendar year within which such employing unit employed one (1) or more individuals in an employment subject to this act, or" before "the total wages payable" in the first sentence of subsection (b).

The 1971 amendment deleted the former first paragraph of subsection (c), for text of which see parent volume; inserted "An employing unit not otherwise subject to this act, or" at the beginning of the former second paragraph, now the only paragraph, of subsection (c); added subsection (d); and made minor changes in phraseology.

The 1973 amendment added the clause excepting elective coverage under subsections (c) and (d) to the end of subsection (a); inserted "and (d)" near the beginning of subsection (b); substituted "division" for "commission" throughout the section; inserted "written" before "notice" in the third sentence of subsection (d); deleted "at least thirty (30) days prior to the effective date of such election" at the end of the third sentence in subsection (d); inserted the fourth sentence of subsection (d); deleted the last sentence of subsection (d), which stated

the effective date of the section; and made a minor change in style.

The 1975 amendment deleted references to subsection (d); and deleted subsection (d) which read: "Any political subdivision of this state may elect to cover under this act service performed by employees in all the hospitals and institutions of higher education as defined in section 87-148 (n) and (o), operated by such political subdivision. The election may exclude any services described in section 87-148 (j)(7)(A). Election is to be made by filing with the division a written notice of such election. The effective date of the written election shall be any date after December 31, 1971, designated by the employing unit, provided that the date shall not be prior to January 1 of the calendar year in which the written election has been filed. Any political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided in section 87-109 (b)(4). An election under this section may be terminated, by filing with the division written notice not later than thirty (30) days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed after that date."

87-111. Unemployment compensation account — establishment and control. There is hereby established separate and apart from all public moneys or funds of this state, an account in the agency fund known as the unemployment compensation account, which shall be administered by the division exclusively for the purposes of this act. Any reference to the unemployment compensation fund in this code shall be taken to mean the unemployment compensation account in the agency fund. This account shall consist of (1) all contributions collected under this act, inclusive of voluntary contributions as provided in section 87-109 (c)(4), and payments made in lieu of contributions as provided in section 87-109 (b)(2) and (4); (2) interest earned upon any moneys in the account; (3) any property or securities acquired through the use of moneys belonging to the account; (4) all earnings of such property or securities; and (5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended. All moneys in the account shall be mingled and undivided.

History: En. Subd. (a), Sec. 9, Ch. 137, L. 1937; amd. Sec. 2, Ch. 190, L. 1945; amd. Sec. 4, Ch. 171, L. 1957; amd. Sec. 206, Ch. 147, L. 1963; amd. Sec. 1, Ch. 88, L. 1971; amd. Sec. 5, Ch. 368, L. 1975.

Amendments

The 1971 amendments inserted "and payments made in lieu of contributions as provided in section 87-109 (b) (2) and (4)" at the end of clause (1) in the third sentence.

The 1975 amendment substituted "division" for "commission" near the end of the first sentence.

87-112. Accounts and deposits. The state treasurer shall be ex officio the treasurer and custodian of the unemployment compensation account and shall administer such account in accordance with the directions of the division and shall issue his warrants upon it in accordance with such regulations as the division shall prescribe. He shall maintain within the account three (3) separate accounts; (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the unemployment compensation account, upon receipt thereof by the division, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to sections 87-135 to 87-139 may be paid from the clearing account upon warrants

issued by the treasurer under the direction of the division. After clearance thereof, all other money in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned for the payment of benefits from this state's account in the unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the division, in any bank or public depository in which general funds of the state may be deposited but no public deposit insurance charge or premium shall be paid out of the unemployment compensation account. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the unemployment compensation account in an amount fixed by the division and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the unemployment compensation administration account.

History: En. Subd. (b), Sec. 9, Ch. 137, L. 1937; amd. Sec. 5, Ch. 171, L. 1957; amd. Sec. 207, Ch. 147, L. 1963; amd. Sec. 6, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section.

87-113. **Withdrawals.** (a) Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the division, except that money credited to this state's account pursuant to section 903 of the Social Security Act, as amended, may also be withdrawn for the payment of expenses for the administration of this act and of public employment offices, as provided by this act. The division shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the division, shall be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in section 87-112.

(b) Money credited to the account of this state in the unemployment

trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this act pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which: (A) specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (B) limits the period within which such money may be expended to a period ending not more than two (2) years after the date of the enactment of the appropriation law, and (C) limits the amount which may be used during any twelve (12) month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (1) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same twelve (12) month period and the four (4) preceding twelve (12) month periods, exceeds (2) the aggregate of the amounts used pursuant to this subsection and charged against the amounts credited to the account of this state during any of such five (5) twelve (12) month periods. For the purposes of this subsection, amounts used during any such twelve (12) month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount used for administration during any such twelve (12) month period may be charged against any amount credited during such a twelve (12) month period earlier than the fourth preceding such period. Money requisitioned for the payment of expenses of administration pursuant to this subsection shall be deposited in the unemployment compensation administration fund, but until expended, shall remain a part of the unemployment compensation fund. The division shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is, for any reason, not to be expended for the purpose for which it was appropriated, or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(c) All warrants issued by the treasurer for payment pursuant to this section shall bear the signature of the treasurer and the countersignature of a member of the division or its duly authorized agent for that purpose.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section.

87-114. Disbursement of funds if federal act becomes inoperative. If title III or IX of the Federal Social Security Act is declared unconstitutional or in any way is inoperative, this act automatically becomes inoperative under the provisions of this act, and the funds which then remain in the unemployment trust fund shall immediately be paid to the state treasurer to be paid into the unemployment compensation fund and funds

there held shall be immediately distributed, upon order of the division, to the employers who have contributed thereto on a proportionate basis. If any part thereof remains undistributed for a period of one (1) year it shall be paid to the general fund of the state of Montana.

History: En. Subd. (d), Sec. 9, Ch. 137, L. 1937; amd. Sec. 8, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" near the end of the first sentence.

87-115. Repealed.

Repeal

Section 87-115 (Sec. 1, Ch. 167, L. 1939), relating to transfers from unemployment compensation trust funds to the railroad unemployment insurance account, was repealed by Sec. 34, Ch. 368, Laws of 1975.

87-116. Agreements with railroad retirement board. The unemployment compensation division of Montana is hereby authorized to co-operate with and enter into agreements with the railroad retirement board with respect to establishment, maintenance and use of Montana state employment service facilities, and to make available to the said railroad retirement board the records of the division relating to employer's status and contributions received from employers covered by the Railroad Unemployment Insurance Act, together with employee wage records and such other data as the railroad retirement board may deem necessary or desirable for the administration of the Railroad Unemployment Insurance Act (52 Stat. 1094); that any moneys received by the unemployment compensation division of Montana from the railroad retirement board or any other governmental agency with respect to the establishment, maintenance and use of Montana state employment service facilities, shall be paid into and credited the proper division of the unemployment compensation administration fund set up and established under sections 87-133 and 87-134.

History: En. Sec. 2, Ch. 167, L. 1939; amd. Sec. 9, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section.

87-117. Repealed.

Repeal

Section 87-117 (Subd. (a), Sec. 10, Ch. 137, L. 1937; Sec. 1, Ch. 102, L. 1953; Sec. 1, Ch. 132, L. 1969; Sec. 1, Ch. 65, L. 1971), creating the unemployment compensation commission of Montana, was repealed by Sec. 34, Ch. 368, Laws of 1975.

87-118. Divisions. The division shall establish two co-ordinate bureaus: The Montana state employment service bureau created pursuant to section 87-132, and the unemployment insurance bureau. Each bureau shall be responsible to the administrator for the discharge of its distinctive function. Each bureau shall be a separate administrative unit with respect to personnel, budget, and duties except in so far as the division may find that such separation is impracticable.

History: En. Subd. (b), Sec. 10, Ch. 137, L. 1937; amd. Sec. 2, Ch. 132, L. 1969; amd. Sec. 10, Ch. 368, L. 1975.

Amendments

The 1969 amendment substituted "unemployment insurance division" for "unemployment compensation division" in the first sentence.

The 1975 amendment substituted "division" for "commission" throughout the section; substituted references to the employment service bureau and the unemployment insurance bureau for references to the employment service division and the unemployment insurance division; and substituted "administrator" for "executive director" in the second sentence.

Cross-References

Bureaus within division of employment security, sec. 82A-1006 (2).

87-119. Repealed.

Repeal

Section 87-119 (Subd. (c), Sec. 10, Ch. 137, L. 1937), relating to quorum requirements for the unemployment compensation commission, was repealed by Sec. 34, Ch. 368, Laws of 1975.

87-120. Administration—duties and powers of division. It shall be the duty of the division to administer this act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this act, which the division shall prescribe. The division shall determine its own organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. The division shall report as provided in section 2 [82-4002] of this act. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the division in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the division believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

History: En. Subd. (a), Sec. 11, Ch. 137, L. 1937; amd. Sec. 6, Ch. 156, L. 1961; amd. Sec. 40, Ch. 93, L. 1969; amd. Sec. 11, Ch. 368, L. 1975.

Amendments

The 1969 amendment substituted the reporting requirements of section 82-4002 in the fourth sentence for former provision requiring annual reports.

The 1975 amendment substituted "division" for "commission" throughout the section.

Cross-References

Quasi-judicial functions of commission transferred to board of labor appeals, sec. 82A-1009.

87-121. Regulations and general and special rules. General and special rules may be adopted, amended, or rescinded by the division only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten days after filing

with the secretary of the state and publication in one or more newspapers of general circulation in this state. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the division and shall become effective in the manner and at the time prescribed by law.

History: En. Subd. (b), Sec. 11, Ch. 137, L. 1937; amd. Sec. 12, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section; and substituted "prescribed by law" for "prescribed by the commission" at the end of the section.

87-122. Publication. The division shall cause to be printed for distribution to the public the text of this act, the division's regulations and general and special rules, annual reports to the governor, and any other material the division deems relevant and suitable and shall furnish the same to any person upon application therefor.

History: En. Subd. (c), Sec. 11, Ch. 137, L. 1937; amd. Sec. 13, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section; and made a minor change in phraseology.

87-123. Personnel. Subject to other provisions of this act, the division is authorized to appoint, fix the compensation and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this act. The division may delegate to any such persons such power and authority as it deems reasonable and proper for the effective administration of this act, and may in its discretion bond any person handling money or signing checks hereunder. The division shall classify positions under this act and shall establish salary schedules and minimum personnel standards for the positions so classified. The division shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments of not to exceed six months in duration, such personnel shall be appointed on the basis of efficiency and fitness as determined in such examinations. No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office shall be appointed or employed under this act. The division shall establish and enforce fair and reasonable regulations for appointments, promotions, and demotions based upon ratings of efficiency and fitness and for terminations for cause.

History: En. Subd. (d), Sec. 11, Ch. 137, L. 1937; amd. Sec. 14, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section.

87-124. Records and reports. Each employing unit shall keep true and accurate work records, containing such information as the division may prescribe. Those records shall be open to inspection and shall be subject to being copied by the division or its authorized representative at

any reasonable time and as often as may be necessary. The division and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which the division considers necessary to the effective administration of this act. Information thus obtained or obtained from any individual under this act shall, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and shall not be published or be open to public inspection except to public employees in the performance of their public duties in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the board of labor appeals or appeal tribunal shall be supplied with information from the records to the extent necessary for the proper presentation of his claim. Any employee or member of the division who violates any provision of this section shall be fined not less than twenty dollars ($20) nor more than two hundred dollars ($200), or imprisoned for not longer than ninety (90) days, or both.

History: En. Subd. (e), Sec. 11, Ch. 137, L. 1937; amd. Sec. 1, Ch. 144, L. 1974; amd. Sec. 15, Ch. 368, L. 1975.

Amendments

The 1974 amendment inserted "to the individual claimant" after the first "except" in the fourth sentence and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "division" for "commission" throughout the section; and substituted "before the board of labor appeals" for "before the commission" near the end of the section.

87-125, 87-126. Repealed.

Repeal

Sections 87-125 and 87-126 (Subds. (f), (g), Sec. 11, Ch. 137, L. 1937; Sec. 3, Ch. 164, L. 1955), relating to the collateral judicial powers of the unemployment compensation commission, were repealed by Sec. 34, Ch. 368, Laws of 1975.

87-127. Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the division or board of labor appeals, the chairman of an appeal tribunal or any duly authorized representative of either of them or in obedience to the subpoena of the division or board of labor appeals or any member thereof or any duly authorized representative of the division in any cause or proceeding before the division or board of labor appeals, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

History: En. Subd. (h), Sec. 11, Ch. 137, L. 1937; amd. Sec. 16, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section; inserted references to the board of labor appeals; and made a minor change in phraseology.

87-128. State-federal co-operation. In the administration of this act, the division shall co-operate to the fullest extent consistent with the provisions of this act with the secretary of labor, pursuant to the provisions of the Social Security Act, as amended; shall make such reports, in such form and containing such information as the secretary of labor may from time to time require, and shall comply with such provisions as the secretary of labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the secretary of labor governing the expenditures or [of] such sums as may be allotted and paid to this state under title III of the Social Security Act, as amended, for the purpose of assisting in the administration of this act. The division shall co-operate with the secretary of labor in the administration of any act of Congress establishing unemployment compensation benefits or similar benefits for federal employees and veterans or ex-service personnel of the armed forces of the United States, and shall do so in such manner as may be deemed advisable and expedient in order to carry out the purpose of this act. The division is hereby authorized and empowered to perform any and all acts, including the execution of agreements and contracts which may be required under and pursuant to any act passed by the Congress of the United States, authorizing the extension of unemployment compensation benefits by federal law if the division in its discretion deems it advisable to perform such acts.

Upon request therefor the division shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this act.

History: En. Subd. (i), Sec. 11, Ch. 137, L. 1937; amd. Sec. 7, Ch. 171, L. 1957; amd. Sec. 7, Ch. 156, L. 1961; amd. Sec. 17, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section.

87-129. Reciprocal benefit arrangements. The division is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government, whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in this act, or under similar provisions of the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the division finds will be fair and reasonable as to all affected interests, and will not result in any substantial loss to the fund.

The division shall participate in any arrangements, approved by the U.S. secretary of labor, with the appropriate agencies of the other states

or of the federal government whereby wages or services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government, shall be deemed to be wages for employment by employers for benefit purposes;

Provided that in any instance involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws that the base period of a single state law will be used; and

Provided that such combining of wages will not involve the duplicate use of such wage credits; and

Provided that such other state agency or agency of the federal government has agreed to reimburse the unemployment compensation fund for such portion of benefits paid under this act upon the basis of such wages or services as the division finds will be fair and reasonable as to all affected interests; and whereby the division will reimburse other state or federal agencies charged with the administration of unemployment compensation laws, with such reasonable portion of benefits, paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers, as the division finds will be fair and reasonable to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of this act. The division is hereby authorized to make to other state or federal agencies, reimbursements from or to the unemployment compensation fund, in accordance with arrangements made pursuant to this section.

History: En. Subd. (j), Sec. 11, Ch. 137, L. 1937; amd. Sec. 3, Ch. 190, L. 1945; amd. Sec. 2, Ch. 91, L. 1971; amd. Sec. 18, Ch. 368, L. 1975.

Amendments

The 1971 amendment substituted "shall participate in any arrangements, approved by the U. S. secretary of labor" for "is also authorized to enter into arrangements" at the beginning of the second paragraph; inserted the first and second provisos; deleted "and receive from such other state or federal agencies" before "reimbursements" in the final sentence of the section; and made minor changes in phraseology and style.

The 1975 amendment substituted "division" for "commission" throughout the section.

87-130. Acquisition of property. Subject to the approval of the department of administration, the division may purchase such equipment, supplies, and real property as it may deem necessary and proper. The title to any real property purchased shall be taken in the name of the state of Montana. Subject to the approval of the department of administration, the division may sell any equipment, supplies or real property previously acquired by it, and the proceeds of such sale shall be deposited into the unemployment compensation administration fund. In the event the duties, or any part thereof, of the division shall be at any time in the future surrendered to or taken over by the federal government or any agency thereof, the division, with the approval of the department of administration, may lease such equipment and real property to the federal government, or such agency, but the title thereto shall remain in the state of Montana.

History: En. as Sec. 11-A of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 8, Ch. 171, L. 1957; amd. Sec. 19, Ch. 368, L. 1975; amd. Sec. 17, Ch. 343, L. 1977.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section.

The 1977 amendment substituted "department of administration" for "state board of examiners" throughout the section.

87-131. Division to co-operate with other agencies. The division shall afford reasonable co-operation with any government agency charged with war effort or postwar planning responsibilities or with the administration of any system of unemployment allowances or unemployment assistance or of any program designed to prevent or relieve unemployment. The division may make, and may co-operate with other appropriate state agencies in making studies as to the practicability and probable cost of possible new state-administered social security programs; and the relative desirability of state (rather than national) action in any such field. The division shall fully co-operate with the agencies of other states, and shall make every proper effort within its means, to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment compensation funds or state unemployment compensation and employment security programs, or any part of the social security program.

History: En. as Sec. 11-B of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 20, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section.

87-132. State employment service. The division shall create a bureau to be known as the Montana state employment service which bureau shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this act, and for the purpose of performing such duties as are within the purview of the act of Congress entitled; "An act to provide for the establishment of a national employment system and for co-operation with the states in the promotion of such system, and for other purposes," approved June 6, 1933 (48 Stat. 113; U.S.C. Title 29, Sec. 49 (c)), as amended. The said bureau shall be administered by a full-time salaried director. The division shall be charged with the duty to co-operate with any official or agency of the United States having power or duties under the provisions of the said act of Congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of Congress, as amended, are hereby accepted by this state, in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. The employment security division is hereby designated and constituted the agency of this state for the purpose of said act. The division is directed to appoint the personnel of the Montana state employment service. For the purpose of establishing and maintaining free public employment offices,

the division is authorized to enter into agreements with any political subdivisions of this state or with any private, nonprofit organzation, and as a part of any such agreement the division may accept moneys, services, or quarters as a contribution to the employment service account.

History: En. Sec. 12, Ch. 137, L. 1937; amd. Sec. 6, Ch. 164, L. 1941; amd. Sec. 21, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section; substituted "bureau" for "division" throughout the section; and substituted "employment security division" near the end of the section for "unemployment compensation commission."

Cross-References

Bureau of Montana state employment service within division of employment security, sec. 82A-1006 (2).

87-133. **Unemployment compensation administration account.** There is hereby created an account in the federal and private revenue fund to be known as the unemployment compensation administration account. All moneys which are deposited, appropriated or paid into this account are hereby appropriated and made available to the division. All moneys in the account shall be expended solely for the purpose of defraying the costs of administration of this act and costs of administration of such other legislation as shall be specifically delegated to the division for administration by the legislature. All moneys received and deposited in said account for administration expense from the United States of America or any agency thereof, pursuant to section 302, title III of the Social Security Act shall be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this act. The account shall consist of (1) all moneys received from the United States of America or any agency thereof, pursuant to section 302, title III of the Social Security Act, as amended, and (2) all moneys appropriated by the state from the general fund for the purpose of administering this act, all interest and penalties collected on past due contributions as provided by section 87-135; all moneys, trust funds, supplies, facilities or services furnished, deposited, paid and received from the United States of America, or any agency thereof, from this state or any agency thereof, from any other state or any of its agencies, from political subdivisions of the state, or any other source for administrative expense and purpose. Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to section 87-113 shall remain part of the unemployment compensation account and shall be used only in accordance with the conditions specified in section 87-113. All moneys in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. Any balance in this account shall not lapse at any time, but shall be continuously available to the division for the expenditure consistent with this act. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation administration account in an amount to be fixed by the division and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond given by the treasurer for the

unemployment compensation account under section 87-112, shall be paid from the moneys in the unemployment compensation administration account. Any reference to the unemployment compensation administration fund in this code shall be taken to mean the unemployment compensation administration account in the federal and private revenue fund.

History: En. Subd. (a), Sec. 13, Ch. 137, L. 1937; amd. Sec. 7, Ch. 164, L. 1941; amd. Sec. 4, Ch. 190, L. 1945; amd. Sec. 4, Ch. 164, L. 1955; amd. Sec. 9, Ch. 171, L. 1957; amd. Sec. 208, Ch. 147, L. 1963; amd. Sec. 22, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section.

87-134. Reimbursement of fund. This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future, and applied to the replacement of any of the moneys received after July 1, 1941, from the United States of America, or any agency thereof, under title III of the Social Security Act, any unencumbered balances in the unemployment compensation administration fund as of that date, any moneys thereafter granted to this state pursuant to the provisions of the Wagner-Peyser Act, and any moneys made available by the state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser Act, which the secretary of labor finds have, because of any action or contingency, been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of this act. Such moneys shall be promptly supplied by moneys furnished by the state of Montana or any of its subdivisions for the use of the unemployment compensation division and used only for purposes approved by the secretary of labor. The division shall, if necessary, promptly report to the governor and the governor to the legislature, the amount required for such replacement. This section shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of title III of the Social Security Act.

History: En. as Subd. (b) of Sec. 13, Ch. 137, L. 1937 by Sec. 7, Ch. 164, L. 1941; amd. Sec. 5, Ch. 164, L. 1955; amd. Sec. 23, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section.

87-135. Penalty and interest on past-due contributions. Contribution reports not made and filed on the date on which they are due as provided by subsections (a)(1) and (b)(2) of 87-109 shall be subject to a penalty assessment of $10. Contributions unpaid on the date on which they are due and payable, as provided by subsections (a)(1) and (b)(2) of 87-109 shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater, and shall bear interest at the rate of 1% per month or fraction thereof. Interest and penalty collected pursuant to this subsection shall be paid into the unemployment compensation administration fund. When failure to pay contributions in time and before delinquency was not caused by willful intent of the employer and for good cause shown, the division may abate the penalty

for late filing or late payment or both. Interest shall not be subject to abatement.

History: En. Subd. (a), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 5, Ch. 190, L. 1945; amd. Sec. 24, Ch. 368, L. 1975; amd. Sec. 1, Ch. 197, L. 1977.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section.

The 1977 amendment inserted the first sentence; substituted "provided by subsections (a)(1) and (b)(2) of 87-109" for "prescribed by the division" in the second sentence; increased the penalty assessment for delinquent contributions from the greater of $5 or 5% of the amount due to the greater of $10 or 10%; increased the rate of interest from ½% for each full month the payment was overdue to 1% per month or fraction thereof; substituted the provisions at the end of the section specifying that interest is not subject to abatement for former provisions specifying the contrary; and made minor changes in style.

87-136. Collection—reciprocity with other states in effecting collection of unpaid unemployment compensation taxes. (1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the division, Montana department of labor and industry, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the workers' compensation law of this state. Action for the collection of contributions due shall be brought within 5 years after the due date of such contributions, otherwise to be barred as provided in 93-2604.

(2) The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state. The division, Montana department of labor and industry, is hereby empowered to sue in the courts of any other jurisdiction which extends such comity, to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state, to collect for such contributions and interest and penalties, if any, due such state; in any such case the administrator may through his attorney or attorneys institute and conduct such suit for such other state. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties and interest due under this act. A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment compensation contributions, penalties and interest shall be conclusive evidence of such authority.

(3) Any contractor, who is or becomes an employer under the provisions of this act, who contracts with any subcontractor, who also is or becomes an employer under the provisions of this act, shall withhold sufficient money on the contract to guarantee that all contributions, penalties, and interest are paid upon completion of the contract. It shall

be the duty of any subcontractor who is or becomes an employer under the provisions of this act, to furnish the contractor with a certification issued by the employment security division, prior to final payment for the particular job, stating that said subcontractor is current and in full compliance with the provisions of this act. Failure to comply with the provisions of this section shall render the contractor directly liable for all contributions, penalties and interest due from the subcontractor on the particular job and the administrator has all of the remedies of collection against the contractor under the provisions of this act as though the services in question were performed directly for the contractor.

(4) When a corporation subject to Montana corporate law has failed to file the annual corporation report with the Montana secretary of state, as required by law, the division shall hold the president, vice-president, secretary and treasurer jointly and severally liable for any contributions due for the period in which the corporation is delinquent in filing the annual corporation report. If the required annual corporation report is made and filed after the time specified, such officers may not, on account of prior failure to make report, be held liable for the contributions thereafter accruing.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977.

Amendments

The 1969 amendment designated the former section as subsection (a) and added subsection (b).

Chapter 105, Laws of 1975, substituted "division" for "commission" throughout the section; redesignated subsections (a) and (b) as subsections (1) and (2); substituted "administrator" for "chairman of the commission of this state" near the middle of subsection (2); and added subsection (3).

Chapter 368, Laws of 1975, substituted "division, Montana department of labor and industry" for "commission" throughout the section; and substituted "administrator" for "chairman of the commission of this state" in subsection (2).

The 1977 amendment substituted "workers' compensation law" in subsection (1) for "workmen's compensation law"; added subsection (4); and made minor changes in style.

87-138. Refunds. If not later than three (3) years after the date on which any contributions or interest thereon became due, or not later than one (1) year from the date on which payment was made, whichever is later, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made and the division shall determine that such contributions or interest or any portion thereof was erroneously collected, the division shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the division shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the division's own initiative. If the division shall determine that an employer has paid contributions to this state under this act, when such contributions should have been paid to another state, under a similar act of such other state, transfer of such contributions to such other state shall be made upon discovery, or upon proof of payment that such other state has been fully paid,

then refund to such employer shall be made at any time upon application without limitation of time. In the event that this act is not certified by the secretary of labor under section 1603 of the Internal Revenue Code, as amended, 1939, for any year, then and in that event, refunds shall be made of all contributions required under this act from employers for that year.

History: En. Subd. (d), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 6, Ch. 164, L. 1955; amd. Sec. 10, Ch. 171, L. 1957; amd. Sec. 26, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section.

87-139. **Lien for payment.** If any contributions payable by an employer under this act, or any portion thereof, is not paid within twenty-five (25) days after the same becomes due, the division may issue a certificate under its official seal, setting forth the amount of contributions due and interest accrued, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the employer owing the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and costs of executing the same and to return such certificates to the division and pay to the division the money collected by virtue thereof by a time to be therein specified, not more than ninety (90) days from the date of the certificate. The said sheriff shall, within five (5) days after the receipt of the certificate, file with the clerk of the district court of his county a copy thereof and thereupon the said clerk of the district court shall enter in the judgment docket, in the column for judgment debtors, the name of the employer mentioned in the certificate, and in the appropriate columns the amount of contributions due and the penalties for which the certificate is issued and the date when such copy is filed and thereupon the amount of such certificate so docketed shall become a lien upon the title to and interest in real property or chattels real of the employer against whom it is filed in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for his services in executing the certificate, to be collected in the same manner.

History: En. as Subd. (e) of Sec. 14, Ch. 137, L. 1937 by Sec. 8, Ch. 164, L. 1941; amd. Sec. 8, Ch. 156, L. 1961; amd. Sec. 27, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section.

87-140. **Summary or jeopardy assessment.** If any employer fails to file a report or return as required under this act, or the regulations of the division adopted thereunder, within the time specified, the division may make a summary or jeopardy assessment, of the amount due by making up such report and determining the amount of contributions due and owing to the fund upon the basis of such information as the division may be able to obtain, and thereupon the same shall be collected the same

as other reports and contributions due, with penalty and interest as provided in this act. Upon making such summary or jeopardy assessment, the division shall immediately notify the employer in writing by personal service or by registered mail in the usual course, at the last known principal place of business operated by the said employer. Such assessment shall be final unless the employer shall protest such assessment in writing within fifteen (15) days after service of the notice, or within the same period of time the said employer shall file a correct, signed and sworn report and statement as provided by the act and the regulations of the division. Upon written protest being filed as above set forth, a day certain for the hearing thereof shall be fixed by the division and notice thereof mailed to the employer. At such hearing, the facts ascertained by the division shall be conclusive and the division may upon the basis of such facts ascertained assess the amount due, modify, set aside or revise the prior assessment and require the employer to pay the amount due with penalty and interest as provided for in this act. A copy of the decision of the division and the assessment of the amount due shall be mailed to the employer at his last known principal place of business and thereupon become final.

History: En. as Subd. (f) of Sec. 14, Ch. 137, L. 1937 by Sec. 3, Ch. 233, L. 1943; amd. Sec. 28, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section.

87-142. Limitation of fees. No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the division or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the chairman of an appeal tribunal or the division or its representatives, the board of labor appeals, or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the division or board of labor appeals. Any person who violates any provision of this section shall, for each such offense, be fined not more than five hundred ($500.00) dollars, or imprisoned for not more than six (6) months, or both.

History: En. Subd. (b), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; amd. Sec. 29, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" throughout the section; inserted "the board of labor appeals" in the second sentence after "or its representatives"; and substituted "division or board of labor appeals" for "commission" at the end of the second sentence.

Attorney's Fees

Attorney who failed to notify unemployment compensation commission that he represented three clients on a contingent fee basis, which the court determined could be considered a debt for "necessaries" under section 87-143, and not having requested notification from the commission so that he could collect his fee from the three men, was unable to proceed against either the commission or the state. McAlear v. Unemployment Compensation Commission, 145 M 458, 405 P 2d 219.

87-143. No assignment of benefits—exemptions.

Attorney's Fees

Where services rendered by attorney restored three men to the rolls of the unemployment compensation commission, set aside a one-year purge of their names from those rolls, and cleared their names

of fraud, court concluded that under such facts attorney's fees should be considered a debt incurred for "necessaries." Mc Alear v. Unemployment Compensation Commission, 145 M 458, 405 P 2d 219.

87-145. Penalties—falsity or willful nondisclosure—violations by employer or agent—violation of act or regulations—wrongfully collecting benefits. (1) A person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter, or under an employment security law of any other state or territory or the federal government, either for himself or for any other person, is:

(a) disqualified for benefits thereafter for a period of not more than fifty-two (52) weeks, beginning with the first compensable week following the date of such determination by the division, the length of time of the disqualification as herein described to be determined by the division in accordance with the severity of each case; and

(b) required to repay to the division either directly or as authorized by the division, by offset of future benefits to which he may be entitled or by a combination of both such methods, a sum equal to the amount wrongfully received by him. However, he is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the division's determination that he made false statements, willful nondisclosure, or misrepresentation.

(2) A person who, in order to obtain or increase for himself or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 94-7-204, and the division may cause criminal proceedings to be initiated against him.

(3) A person who, through deception or other fraudulent means, obtains benefits which he is not entitled to under this chapter or under an employment security law of any other state or territory or the federal government or a person legally accountable for such conduct under 94-2-107 is guilty of a crime under 94-6-302, and a county attorney may initiate criminal proceedings against him.

(4) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this chapter, or under the employment security law of any other state, or territory or the federal government or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or by imprisonment for not less than three (3) days nor more than thirty (30)

days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(5) Any person who shall willfully violate any provision of this chapter or any order, rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or by imprisonment for not less than three (3) days nor more than thirty (30) days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(6) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the division, either be liable to have such sum deducted from any future benefits payable to him under this chapter or shall be liable to repay to the division for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this chapter for the collection of past due contributions. Action for collection of overpaid benefits shall be brought within five (5) years after the date of such overpayment, otherwise to be barred as provided in section 93-2604.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977.

Amendments

The 1969 amendment in item (a) (2) (A), deleted "he" before "will not be required," and in item (a) (2) (B), substituted "A period of not less than ten (10) nor more than fifty-two (52) weeks" for "Twelve (12) months" at the beginning, and added "the length of the time * * * the severity of each case."

Chapter 17, Laws of 1975, substituted "division" for "commission" throughout the section; and inserted "either directly or by offset of future benefits to which he may be entitled" in subdivision (a) (2)(A).

Chapter 368, Laws of 1975, substituted "division" for "commission" throughout the section; and inserted "he" after "provided, however" in subdivision (a)(2)(A).

The 1977 amendment redesignated former subsection (a) as subsection (1); deleted a former subdivision (a)(1) providing penalty for false statement or representation; redesignated former subdivision (a)(2) as subdivision (1)(a); deleted "less than ten (10) nor" before "more than fifty-two (52) weeks" in subdivision (1)(a); inserted "beginning with the first compensable week following" in subdivision (1)(a); redesignated former subdivision (a)(2)(A) as subdivision (1)(b); inserted subsections (2) and (3); redesignated former subsections (b) through (d) as subsections (4) through (6); and made minor changes in phraseology, punctuation and style.

87-146. Representation in court. (a) In any civil action to enforce the provisions of this act the division and the state may be represented by any qualified attorney who is employed by the division and is designated

by it for this purpose or at the division's or board of labor appeals' request, by the attorney general.

(b) * * * [Same as parent volume.]

History: En. Sec. 17, Ch. 137, L. 1937; amd. Sec. 8, Ch. 164, L. 1955; amd. Sec. 31, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" twice in subsection (a); and substituted "division's or board of labor appeals'" for "commission's" in subsection (a).

87-147. Nonliability of state. Benefits shall be deemed to be due and payable under this act only to the extent provided in this act and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the division shall be liable for any amount in excess of such sums.

History: En. Sec. 18, Ch. 137, L. 1937; amd. Sec. 32, Ch. 368, L. 1975.

Amendments

The 1975 amendment substituted "division" for "commission" near the end of the section.

87-148. Definitions. As used in this act, unless the context clearly requires otherwise:

(a) "Annual payroll" means the total amount of wages paid by an employer (regardless of the time of payment) for employment during a calendar year.

(b) * * * [Same as parent volume.]

(c) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year provided, however, that in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(d) "Benefit year" with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim, and thereafter the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year, provided that if such filing shall result in an overlapping of benefit years the new benefit year shall begin upon the first Sunday following the expiration of his last preceding benefit year provided, however, that in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(e) * * * [Same as parent volume.]

(f) "Division" means the employment security division of the department of labor and industry provided for in Title 82A, chapter 10, R. C. M. 1947.

(g) "Contributions" means the money payments to the state unemployment compensation fund required by this act.

(h) "Employing unit" means any individual or type of organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one (1) or more individuals performing services for it within this state; except as provided under (i)(1)(A) and (B) of this section; and all individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(i) "Employer" means:

(1) Any employing unit whose total annual payroll within either the current or preceding calendar year, exceeds the sum of five hundred dollars ($500); except:

(A) Agricultural labor exempted under (j)(9) of this section shall be considered employment subject to this act effective January 1, 1978, whenever the employing unit pays $40,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 20 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer is otherwise subject to the act and has agricultural employment, all employees are covered under the act regardless of the amount of moneys expended for agricultural purposes.

(B) Domestic service exempted under (j)(9)(B) of this section shall be considered employment subject to this act, effective January 1, 1978, whenever the employing unit pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to the act and has domestic employment, all employees are covered under the act regardless of the amount of moneys expended for domestic purposes.

(2) and (3) * * * [Same as parent volume.]

(4) Any employing unit not an employer by reason of any other paragraph of this subsection for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund, or an employing unit, which, as a condition for approval of this act for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an "employer" under this act.

(5) Any employing unit which, having become an employer under paragraph (1), (2), or (3), or (4), has not, under section 87-110, ceased to be an employer subject to this act; or

(6) For the effective period of its election pursuant to section 87-110 (c) and (d) any other employing unit which has elected to become fully subject to this act.

(j) (1) "Employment" subject to other provisions of this subsection means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(A) For the purposes of this subsection any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

(1) if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(2) if such individual is not an employee of such other person within the meaning of (i)(1) of this section.

(B) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (A):

(1) such other person and not the crew leader shall be treated as the employer of such individual; and

(2) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(C) The term "crew leader" means an individual who:

(1) furnishes individuals to perform service in agricultural labor for any other person;

(2) pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them; and

(3) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(2) * * * [Same as parent volume.]

(3) Service not covered under paragraph (2) of this subsection, and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act if the individual performing such services is a resident of this state and the division approves the election of

the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(4) * * * [Same as parent volume.]

(5) Services performed by an individual for wages shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the division that:

(A) to (C) * * * [Same as parent volume.]

(6) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one (1) or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. Effective after July 1, 1975, the term "employment" shall include service performed by all individuals including without limitations those individuals who work for the state of Montana, its university, any of its colleges, public schools, components or units thereof, or any local government unit, and one (1) or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages. "Employment" shall not include elected public officials.

(7) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(A) For the purposes of paragraph (7) of this subsection the term "employment" does not apply to service performed:

(1) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) In the employ of a school which is not an institution of higher education, prior to December 31, 1977; or

(4) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(5) Services performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(6) Services performed for a state prison or other state correctional or custodial institution by an inmate of that institution.

(8) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subparagraphs (2) or (4) of this subsection or the parallel provisions of another state's law), if:

(A) The employer's principal place of business in the United States is located in this state; or

(B) The employer has no place of business in the United States, but

(1) The employer is an individual who is a resident of this state; or

(2) The employer is a corporation which is organized under the laws of this state; or

(3) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(C) None of the criteria of divisions (A) and (B) of this subparagraph is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(D) An "American employer," for purposes of this paragraph, means a person who is:

(1) An individual who is a resident of the United States; or

(2) A partnership if two-thirds (2/3) or more of the partners are residents of the United States; or

(3) A trust, if all of the trustees are residents of the United States; or

(4) A corporation organized under the laws of the United States or of any state.

(9) The term "employment" shall not include:

(A) Agricultural labor; except as provided in (i)(1)(A) of this section. The term "agricultural labor" includes all services performed prior to January 1, 1972, which was agricultural labor as defined in this subparagraph prior to such date, and remunerated services performed after December 31, 1971:

(1) On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity commonly known as agricultural commodities, or in connection with the hatching of poultry, or in connection with the operation or

maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes, except where such ditches, canals, reservoirs, or waterways are owned and operated by government entities.

(4) In the employ of the operator of a farm or a group of operators of farms (or a co-operative organization of which such operators are members) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator or operators produced more than one-half (½) of the commodity with respect to which such service is performed.

(5) The provisions of paragraphs (1), (2), (3), and (4) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(6) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(B) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority; except as provided in (i)(1)(B) of this section.

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of eighteen (18) in the employ of his father or mother;

(E) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this section and shall be subject to this act the same as state banks; provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act.

(F) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the division is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner in section 87-121 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring

potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this act;

(G) Services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of eighteen (18) years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution.

(H) Services performed by real estate, securities and insurance salesmen paid solely by commissions and without guarantee of minimum earnings.

(I) Service performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university, or by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

(J) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(K) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital.

(k) "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, or such other free public employment offices operated and maintained by the United States government or its instrumentalities, as the division may approve.

(l) "Fund" means the unemployment compensation fund established by this act, to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this act shall be paid.

(m) "State," includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(n) "Institution of higher education" for the purposes of this section, means an education institution which:

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized in this state to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this section.

(o) "Hospital" means an institution which has been licensed, certified or approved by the state of Montana as a hospital.

(p) "Board" means the board of labor appeals, provided for in Title 82A, chapter 10.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977.

Amendments

The 1965 amendment inserted "securities" in present subdivision (j)(9)(I).

The 1969 amendment deleted "which for some * * * such day" after "employing unit" in subdivision (i) (1).

The 1971 amendment deleted subdivision (a) (2) defining "average annual payroll"; substituted "employment security" for "unemployment compensation" in subdivision (f); inserted "the state government, any of its political subdivisions or instrumentalities" in the first sentence of subdivision (h); inserted subdivision (i) (4) and the reference to it in subdivision (i) (5); redesignated former subdivisions (i) (4) and (i) (5) as subdivisions (i) (5) and (i) (6); inserted "and (d)" in subdivision (i) (6); inserted "by an individual or by an officer of a corporation" in subdivision (j) (1); inserted subdivisions (j) (6), (7) and (8); redesignated former subdivision (j) (6) as subdivision (j) (9); added "prior to * * * December 31, 1971" to the end of the preliminary paragraph of subdivision (j) (9) (A); deleted "maple syrup or maple sugar or" after "harvesting of" in subdivision (j) (9) (A) (3); deleted "or in connection with the raising or harvesting of mushrooms" after "agricultural commodities" in subdivision (j) (9) (A) (3); inserted "the employ * * * are members) in" in subdivision (j) (9) (A) (4); inserted "in its unmanufactured state" in subdivision (j) (9) (A) (4); substituted "operator produced * * * is performed" for "service is * * * for market" in subdivision (j) (9) (A) (4); revised the former second sentence of subdivision (j) (9) (A) (4) and designated it as subdivision (j) (9) (A) (5); redesignated former subdivision (j) (9) (A) (5) as subdivision (j) (9) (A) (6); deleted former subdivision (j)(9)(E); redesignated former subdivisions (j)(6)(F) and (G) as subdivisions (j)(9)(E) (deleted in 1975) and (j)(9)(F) (now (j)(9)(E)); inserted subdivision (j)(9)(G) (deleted in 1973); added present subdivisions (j)(9)(I), (J), and (K); deleted "Hawaii" and "Guam" in subdivision (m); added subdivisions (n) and (o); and made minor changes in phraseology and style.

Chapter 159, Laws of 1973, added the provisos to subdivisions (c) and (d); substituted subdivision (f) for a subdivision defining "commission" as the employment security commssion; substituted "division" for "commission" throughout the section; substituted "contributions paid" for "contributions required to be paid" in subdivision (i) (4); deleted "which is excluded from the term 'employment' as defined in the Federal Unemployment Tax Act solely by reason of section 3306 (c) (8) of that Act" from the end of the preliminary paragraph of subdivision (j)(7); substituted the reference to subparagraph (4) in the preliminary paragraph of subdivision (j) (8) for a reference to subparagraph (3); inserted "or operators" near the end of subdivision (j) (9) (A) (4); added "which has not elected coverage pursuant to section 87-110 (d)" at the end of subdivision (j)

(9)(E) (deleted in 1975); deleted a subdivision (j)(9)(G) exempting service in the employ of certain community action agencies; redesignated subdivisions (j)(9)(H), (I), (J), (K), (L), and (M) as subdivisions (j)(9)(G), (H), (I), (J), (K), and (L); inserted "and payments in lieu of contributions" in subdivision (1); added subdivision (p); and made minor changes in phraseology and punctuation.

Chapter 404, Laws of 1973, made the same changes as did Ch. 159, but with minor differences in style; added the second sentence to subdivision (j) (6); and deleted from the preliminary paragraph of subdivision (j) (7) (A) a reference to paragraph (6) of that subsection.

The 1975 amendment substituted "July 1, 1975" in the second sentence of subdivision (j)(6) for "December 31, 1974"; substituted "individuals including without limitations those individuals who work for the state of Montana, its university, any of its colleges, public schools, components or units thereof, or any local government unit" in subdivision (j)(6) for "individuals in the employ of this state or of any of its instrumentalities (or in the employ of this state)"; added "or political subdivisions whose services are compensated by salary or wages. 'Employment' shall not include elected public officials" to the end of subdivision (j)(6); in subdivision (j)(9)(D) substituted "age of eighteen (18)" for "age of twenty-one (21)"; deleted former subdivision (j)(9)(E) which read: "Service performed in the employ of this state, except as provided in subsection (j)(6) of this section, or of any political subdivision thereof, which has not elected coverage pursuant to section 87-110(d)"; and redesignated former subdivisions (j)(9)(F) to (L) as subdivisions (j)(9)(E) to (K).

The 1977 amendment inserted the exceptions in subdivisions (h), (j)(9)(A), (j)(9)(A)(3) and (j)(9)(B); inserted subdivisions (i)(1)(A) and (B); inserted subdivisions (j)(1)(A) through (C); added "prior to December 31, 1977" to subdivision (j)(7)(A)(3); substituted "state prison or other state correctional or custodial institution" in subdivision (j)(7)(A)(6) for "hospital in a state prison or other correctional institution"; deleted "or the Virgin Islands" after "Canada" in the first paragraph of subdivision (j)(8); added the proviso to subdivision (j)(9)(E); and made minor changes in phraseology and punctuation.

Effective Date

Section 3 of Ch. 84, Laws 1965 read "This act shall be in full force and effect from and after April 1, 1965."

Employee or Independent Contractor

Despite fact that this section is used as a guide in the determination of the relationship between an employer and an individual performing services, the well established test in determining whether an individual is an employee or an independent contractor is also a guide to be used; lessee of self-service gasoline station was an employee for purposes of this act where he was required to make three reports weekly and daily bank deposits to lessor accounts, where the lessee was required to order gasoline from a distributor named by the lessor and where the total control of the gasoline lay with the lessor. Pat Griffin Co. v. Employment Security Comm., — M —, 519 P 2d 147.

Independent Contractor

Logging trucker was an independent contractor and not covered by unemployment compensation under subdivision (j)(5) of this section where he provided his own truck, licensed and insured it in his own name, repaired it and paid operational costs himself, hauled logs from paper company's logging operation site to its log pond, was compensated by weight hauled, could take off any days he chose or could work for others, could hire any relief driver he wanted, could refuse any load he did not want, could choose any route of travel he wanted, and was working under a written contract describing him as an independent contractor and requiring him to carry his own industrial insurance, despite the fact that he had to enter the company's premises to load and unload and that the company determined the hours when crews would be available to assist in loading and unloading. St. Regis Paper Co., Forest Products Division v. Unemployment Compensation Commission, 157 M 548, 487 P 2d 524.

Where individuals operating Gasamat stations were required to make three reports weekly and daily bank deposits to Gasamat accounts, and were required to order gasoline from distributor named by Gasamat and total control of gasoline was with Gasamat, individuals were employees of Gasamat, and not independent contractors. Pat Griffin Co. v. Employment Security Commission, — M —, 519 P 2d 147.

87-149. Definitions—continued. (a) Total unemployment:

(1) An individual shall be deemed "totally unemployed" in any week during which he performed no work and earned no wages or a week of

less than full-time work with wages of less than 2 times his weekly benefit amount. No individual is unemployed in any week that he is self-employed.

(2) An individual's week of unemployment shall be deemed to commence only after his registration at an unemployment office, except as the division may by regulation otherwise prescribe.

(3) (A) Partial payment for a week of unemployment as used in this subsection shall be the claimant's weekly benefit amount less 50% of wages earned in excess of one-fourth of his weekly benefit amount. Such wages and the one-fourth weekly benefit amount, if not a multiple of $1, shall be rounded to the nearest dollar.

(B) Claimant's weekly benefit amount shall also be reduced, as above, by the amount that he is receiving from a governmental or other pension, retirement pay, annuity, or other similar periodic payment which is based on work for and contributed to in whole or in part by a base-period employer. This provision does not apply to the receipt of benefits under the federal Social Security Act, as amended.

(b) * * * [Same as parent volume.]

(c) "Wages," means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the division. Wage records kept by the division for the purposes of this act prior to January 1, 1941, shall be kept on the basis of wages payable, and wage records kept by the division for the purposes of this act after January 1, 1941, shall be kept on the basis of wages paid. Provided, however, that the term "wages" shall not include—

(1) The amount of any payment made to, or on behalf of, an employee by an employer on account of:

(A) to (D) * * * [Same as parent volume.]

(E) Remuneration paid by any county welfare office from welfare assistance funds for services performed at the direction and request of such county welfare office.

(d) to (f) * * * [Same as parent volume.]

(g) The word "division" throughout the unemployment statutes refers to a unit of the Montana state department of labor and industry.

(h) The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment compensation laws and federal laws falling within the administrator's jurisdiction.

(i) The words "board of labor appeals" used in this act mean three (3) persons appointed by the governor, who are not public employees but who are attached to the Montana state department of labor and industry. The function of said board is to act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977.

Amendments

The 1969 amendment, in subdivision (a)(3), substituted "twice the weekly benefit amount" for "fifteen dollars ($15.00) in any one week" in the definition of "wages"; and substituted present definition of "service" for one providing that "'services' shall not include work for which remuneration equal to or less than fifteen dollars ($15.00) per week is payable, or for one (1) day's work not exceeding eight (8) hours, whichever is greater."

The 1975 amendment substituted "division" for "commission" throughout the section; and added subsections (g) to (i).

The 1977 amendment substituted "work and earned no wages * * * his weekly benefit amount" at the end of the first sentence of subdivision (a)(1) for "services and with respect to which no wages are payable to him"; added the second sentence to subdivision (a)(1); substituted subdivisions (a)(3)(A) and (a)(3)(B) for a former subdivision (a)(3) reading "As used in this subsection the term 'wages' shall include only that part of remuneration for work which is in excess of twice the weekly benefit amount, and the term 'service' shall include only that work in excess of twelve (12) hours in any one week"; deleted former subdivision (c)(1)(E); and redesignated subdivision (c)(1)(F) as subdivision (c)(1)(E). For prior version, see parent volume and previous amendment notes.

Repealing Clause

Section 34 of Ch. 368, Laws 1975 read "Sections 87-115, 87-117, 87-119, 87-125, and 87-126, R. C. M. 1947, are repealed."

TITLE 87A—UNIFORM COMMERCIAL CODE

Chapter 1. General provisions, 87A-1-101.
2. Sales, 87A-2-401, 87A-2-403.
8. Investment securities, 87A-8-102, 87A-8-320.
9. Secured transactions—sales of accounts, contract rights and chattel paper, 87A-9-302 to 87A-9-302.3, 87A-9-401 to 87A-9-407.

CHAPTER 1—GENERAL PROVISIONS

Part 1—Short Title, Construction, Application and Subject Matter of the Act
Section 87A-1-101. Short title.

Part 1—Short Title, Construction, Application and Subject Matter of the Act

87A-1-101. Short title. (1) This act shall be known and may be cited as Uniform Commercial Code.

(2) As used in chapters 1 through 9 of this title "code" means "Uniform Commercial Code" unless the context indicates otherwise.

History: En. Sec. 1-101, Ch. 264, L. 1963; amd. Sec. 12, Ch. 265, L. 1977.

Amendments

The 1977 amendment inserted the subsection (1) designation; and added subsection (2).

NOTE.—**Uniform State Law.** In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Commercial Code: Alabama, Arizona, Colorado, Delaware, Florida, Hawaii, Idaho, Iowa, Kansas, Minnesota, Mississippi, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, and also Virgin Islands.

Part 2—General Definitions and Principles of Interpretation

87A-1-201. General definitions.

Course of Dealing from which Agreement Implied

Payor bank's holding and paying of one check as to each of two of the plaintiff-payees was not sufficient to form "a sequence of previous conduct" under section 87A-1-205(1) necessary to establish a course of dealing from which an agreement excusing noncompliance with "midnight rule" under section 87A-4-302 could be implied under subdivision (3) of this section. Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A., — M —, 521 P 2d 679.

Notice by Ordinary Mail

Plaintiff complied with the notice provisions of subdivision (26) of this section when he sent notice of foreclosure sale to debtor by ordinary mail, since in Montana the receipt of mail is presumed if the procedure of the mailing is carried out in a regular manner. James Talcott, Inc. v. Reynolds, — M —, 529 P 2d 352.

87A-1-205. Course of dealing and usage of trade.

Course of Dealing

Payor bank's holding and paying of one check as to each of two of the plaintiff-payees was not sufficient to form "a sequence of previous conduct" necessary to establish a course of dealing from which an agreement excusing noncompliance with "midnight rule" under section 87A-4-302 could be implied under section 87A-1-201 (3). Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A., — M —, 521 P 2d 679.

CHAPTER 2—SALES

Part 3—General Obligation and Construction of Contract

Section 87A-2-328. [Transferred.]

Part 4—Title, Creditors and Good Faith Purchasers

Section 87A-2-401. Passing of title—reservation for security—limited application of this section.
87A-2-403. Power to transfer—good faith purchase of goods—"entrusting."

Part 1—Short Title, General Construction and Subject Matter

87A-2-107. Goods to be severed from realty—recording.

Notice

A contract for sale of standing timber is enforceable against a subsequent buyer of the land to the extent, but only to the extent that he has, or is chargeable with, notice thereof. Pegg v. Mid-State Development Corp., — M —, 529 P 2d 1399.

Timber

A contract for sale of standing timber may be enforced under the provisions of the Uniform Commercial Code or under general contract law of realty. Pegg v. Mid-State Development Corp., — M —, 529 P 2d 1399.

Part 2—Form, Formation and Readjustment of Contract

87A-2-201. Formal requirements—statute of frauds.

Acknowledgment of Contract

Where farmer and grain elevator company entered into an oral contract in which the farmer agreed to sell to the elevator company 18,000 bushels of durum wheat at $1.80 per bushel, farmer, in defending a suit for nondelivery of the promised grain, could not both admit the existence of the contract and resist its enforcement on the basis of this section, by virtue of subdivision (3)(b). Farmers Elevator Co. of Reserve v. Anderson, — M —, 552 P 2d 63.

Memorandum of Oral Contract

When farmer accepted and endorsed an advance payment check to which was attached a memorandum referring by number to previously executed grain purchase contracts of which he had been furnished copies, farmer either signed a memorandum of a prior oral contract or he accepted an offer made by the tender of the purchase contracts and he was bound by the terms of the purchase contracts, including the quantity sold, even though he had not executed the contracts themselves. Cargill, Inc. v. Wilson, — M —, 532 P 2d 988.

87A-2-202. Final written expression—parol or extrinsic evidence.

Parol Evidence Rule

Where the parties to the sale of a used farm combine signed a written sales contract which did not include terms equivalent to the seller's prior oral promises to repair defects in the machine, the writing was not a full and final integration of the parties' agreement, and the parol evidence rule did not exclude evidence of the contract to repair. Massey-Ferguson Credit Corp. v. Brown, — M —, 547 P 2d 846.

87A-2-205. Firm offers.

Offer to Buy

Tender to a farmer of a copy of a standard grain purchase contract, executed by a dealer, constituted at least an offer by the dealer to buy the stated quantity of grain from the farmer. Cargill, Inc. v. Wilson, — M —, 532 P 2d 988.

87A-2-206. Offer and acceptance in formation of contract.

Acceptance of Offer

Farmer accepted dealer's offer to buy stated quantity of grain by receiving without objection an executed copy of standard grain purchase contract, by receiving and endorsing an advance payment

check to which was attached a memorandum referring by number to the grain purchase contract, and by failing to object for four months to quantity stated. Cargill, Inc. v. Wilson, — M —, 532 P 2d 988.

87A-2-208. Course of performance or practical construction.

Course of Performance

Where, due to boxcar shortage which caused a lack of storage space, grain elevator was unable to accept delivery of farmer's wheat under the parties' contract until more than a month after the contemplated delivery date, but after space opened up farmer did deliver 36 truckloads, or 8,802 of the 18,000 bushels he had promised, he had established a course of performance waiving the requirements of the original contract, and his failure to deliver the other 9,198 bushels was an actionable breach of the modified contract. Farmers Elevator Co. of Reserve v. Anderson, — M —, 552 P 2d 63.

87A-2-209. Modification, rescission and waiver.

Waiver of Statute of Frauds

Where the oral contract between a grain elevator and a wheat farmer satisfied the statute of frauds, 87A-2-201, only because at trial the farmer acknowledged the existence of the contract, and the contract as made was not performed, but the parties entered into a different course of performance, the farmer thereby waived his right to assert the statute of frauds with respect to the contract as modified. Farmers Elevator Co. of Reserve v. Anderson, — M —, 552 P 2d 63.

Part 3—General Obligation and Construction of Contract

87A-2-314. Implied warranty—merchantability—usage of trade.

Breach of Warranty

Implied warranties of merchantability and fitness were not met by artificial insemination service which sold semen to cattle rancher who had experienced a ninety-five per cent calf crop via natural service prior to using artificial insemination, where the rancher experienced a seventy per cent calf crop with artificial insemination in the first year and only a seven per cent calf crop in the second year using semen from the same bull under almost identical conditions; the only logical inference was that the semen purchased for use in the second year was defective. Waddell v. American Breeders Service, Inc., 161 M 221, 505 P 2d 417.

DECISIONS UNDER FORMER LAW

Manufacturer's Warranty

Seller who did not manufacture laundromat equipment made no implied warranty of fitness for intended use within former statute providing that one who manufactures an article under order for particular purpose warrants by sale that it is reasonably fit for that purpose, especially in view of seller's disclaimer printed on reverse side of sales agreement. Ryan v. Ald, Inc., 149 M 367, 427 P 2d 53.

87A-2-315. Implied warranty—fitness for particular purpose.

Amendment of Complaint

Granting plaintiff's motion to amend complaint to include theory of implied warranty of fitness for a particular purpose was error where motion was presented shortly before trial and plaintiff had relied upon theory of negligence through the entire course of pretrial proceedings; warranty theory was foreign to the proper pleading of the case and required defendant to be prepared for an entirely different defense theory. McGuire v. Nelson, — M —, 508 P 2d 558.

Breach of Warranty

Implied warranties of merchantability and fitness were not met by artificial insemination service which sold semen to cattle rancher who had experienced a ninety-five per cent calf crop via natural service prior to using artificial insemination, where the rancher experienced a seventy per cent calf crop with artificial insemination in the first year and only a seven per cent calf crop in the second year using semen from the same bull under almost identical conditions; the only logical

inference was that the semen purchased for use in the second year was defective. Waddell v. American Breeders Service, Inc., 161 M 221, 505 P 2d 417, 61 ALR 3d 801.

87A-2-316. Exclusion or modification of warranties.

Used Farm Equipment—Implied Warranties

Implied warranties of merchantability and fitness for purpose were inapplicable to sale of used farm combine where buyer owned a large farm-ranch operation and had been in the farm business for a substantial length of time and knew or should have known that used machinery was customarily not warranted beyond a sharing of the cost of repairs and he acquiesced in sharing of repair expenses for more than a year. Spurgeon v. Jamieson Motors, — M —, 521 P 2d 924.

87A-2-328. [Transferred.]

Compiler's Notes

Section 2, Ch. 263, Laws 1977, renumbered this section as sec. 74-702.

Part 4—Title, Creditors and Good Faith Purchasers

87A-2-401. Passing of title—reservation for security—limited application of this section. Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. In so far as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) to (3) * * * [Same as parent volume.]

(4) For transactions involving interstate shipment of cattle the seller may issue a regular title or bill of sale, or give a conditional transfer of title or bill of sale. The conditional transfer of title or bill of sale is fully validated and the title passes when the following conditions are met:

(a) the bank on which the buyer's warrant, check, or draft was drawn, notifies the seller, or his designated bank, that the instrument of payment has cleared the bank for payment, and

(b) a copy of the notification from the buyer's bank is attached to the conditional transfer of title or bill of sale.

(5) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale."

History: En. Sec. 2-401, Ch. 264, L. 1963; amd. Sec. 1, Ch. 130, L. 1975.

Amendments

The 1975 amendment inserted subdivision (4); and redesignated former subdivision (4) as subdivision (5).

87A-2-403. Power to transfer—good faith purchase of goods—"entrusting". (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good

faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:

(a) the transferor was deceived as to the identity of the purchaser;

(b) the delivery was in exchange for a check which is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as theft under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods has been such as to constitute theft under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the chapters on secured transactions (chapter 9), bulk transfers (chapter 6) and documents of title (chapter 7).

History: En. Sec. 2-403, Ch. 264, L. 1963; amd. Sec. 63, Ch. 359, L. 1977.

Amendments

The 1977 amendment substituted "theft" in subdivision (1)(d) and subsection (3) for "larcenous"; and made minor changes in phraseology, punctuation and style.

Part 6—Breach, Repudiation and Excuse

87A-2-607. Effect of acceptance, etc.

Timeliness of Notice of Breach

In action to recover for breach of warranty of semen sold to cattle rancher by artificial insemination service, buyer gave timely notice of breach of warranty by informing seller of calf crop failure ten months after artificial insemination process. Waddell v. American Breeders Service, Inc., 161 M 221, 505 P 2d 417, 61 ALR 3d 801.

Part 7—Remedies

87A-2-715. Buyer's incidental and consequential damages.

Consequential Damages

Consequential damages are those that ordinarily follow the breach of a contract in the usual course of events, or that reasonable men would have foreseen as a probable result of the breach, and thus in the case of defective semen sold for artificial insemination, the loss of a calf crop would be reasonably foreseeable, but the loss of a second calf crop which might have been produced by the unborn calf crop is not reasonably foreseeable. Baden v. Curtiss Breeding Service, 380 F Supp 243.

87A-2-719. Contractual modification or limitation of remedy.

Limitation of Damages

Clause in telephone company contract for "yellow pages" advertising, limiting liability for errors and omissions in advertising was a valid and binding limitation rather than a contract fixing damages. State ex rel. Mountain States Telephone & Telegraph Co. v. District Court, 160 M 443, 503 P 2d 526.

CHAPTER 3—COMMERCIAL PAPER

Part 1—Short Title, Form and Interpretation

87A-3-112. Terms and omissions not affecting negotiability.

Cross-Reference

Waiver of statutory exemptions in unsecured note unenforceable, sec. 93-5813.1.

Part 4—Liability of Parties

87A-3-407. Alteration.

DECISIONS UNDER FORMER LAW

Material Alteration

In conviction of grand larceny, in which defendant had stolen and subsequently cashed check, the tearing of the check and its repair did not constitute spoilation under former section 55-907, so as to make the check a nonnegotiable instrument. State v. Romero, 146 M 77, 404 P 2d 500.

Part 5—Presentment, Notice of Dishonor and Protest

87A-3-508. Notice of dishonor.

Oral Notice of Dishonor Insufficient Under Circumstances

Oral notice of dishonor of check was insufficient to release payor bank from strict liability rule under section 87A-4-302 where bank president told payee that, although it would take time, checks would clear because things were looking better but checks were never paid and bank made withdrawals from drawer's account to apply against loans not in default. Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A., — M —, 521 P 2d 679.

87A-3-511. Waived or excused presentment, etc.

Applicability

Subsection (4) does not apply to demand items; payor bank was not excused from failure to comply with "midnight deadline" rule of 87A-4-302 by subsection (4) of this section where checks presented by payees were demand items. Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A., — M —, 521 P 2d 679.

CHAPTER 4—BANK DEPOSITS AND COLLECTIONS

Part 1—General Provisions and Definitions

87A-4-103. Variation by agreement, etc.

Agreement Excusing Payor Bank from Noncompliance with "Midnight Rule"

There was no agreement between payor bank and payees excepting bank from strict liability for noncompliance with "midnight rule" of section 87A-4-302 in its failure to give timely notice of dishonor of checks since: (1) bank's holding and paying of one check as to each of two of the payees was not sufficient to form "a sequence of previous conduct" necessary to establish a course of dealing from which an agreement excusing noncompliance with "midnight rule" could be implied under sections 87A-1-201 (3) and 87A-1-205 (1); and (2) alleged understanding with one payee's agent would not be considered an agreement in view of bank's unique position as drawer's creditor. Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A., — M —, 521 P 2d 679.

Custom and Practice

Custom and practice are relevant under subsection (3), if at all, only with respect to establishment of what standard constitutes ordinary care; where payor bank was subject to higher standard of care because of its status as creditor of drawer of checks, its failure to comply with "midnight rule" of section 87A-4-302 in han-

dling checks for collection could not be excused on ground that established custom and practice of Montana banking industry was to hold such checks for an arbitrary length of time in absence of special instructions and writing. Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A., — M —, 521 P 2d 679.

87A-4-108. Delays.

Construction

Effect of subsection (2) of this section is to excuse a payor bank from the standard of strict accountability of section 87A-4-302 and to hold it to a standard of "diligence as the circumstances require"; under subsection (2) there must be a showing that the circumstances were beyond the control of the bank and that the bank exercised such diligence as the circumstances required; the burden of proof is on the bank. Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A., — M —, 521 P 2d 679.

Degree of Diligence Required

Degree of diligence required of payor bank attempting to come under "escape clause" provisions of subsection (2) was greater than it otherwise would have been where bank had financed and refinanced drawers of checks and refinancing loans had not yet been completely repaid; showing of diligence required more than testimony as to normal operating procedures; evidence that armored car which delivered checks to clearinghouse broke down on day checks were presented by payees and that clearinghouse's computer malfunctioned after checks were received by it the next day was insufficient to meet bank's burden of proof of excuse for violation of "midnight deadline" where there was no testimony as to what happened on day after checks were initially received by bank; bank was therefore liable for face amount of checks under strict accountability rule of section 87A-4-302. Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A., — M —, 521 P 2d 679.

Interest on Judgment

Determination by the court that the bank was liable for payment of dishonored checks was based on contract law of negotiable instruments, and the provisions of this statute for damages for negligence or bad faith do not apply. Sun River Cattle Co. v. Miners' Bank of Montana, — M —, 525 P 2d 19.

Part 3—Collection of Items—Payor Banks

87A-4-302. Payor bank's responsibility for late return of item.

"Accountable" Construed

The word "accountable" as used in this section is synonymous with "liable." Sun River Cattle Co., Inc. v. Miner's Bank of Montana N. A., — M —, 521 P 2d 679.

Construction

Essentially this section says that in absence of a valid defense, retention by payor bank of a demand item beyond the "midnight deadline" without either paying, returning or giving notice of dishonor renders the bank liable to the payee for the face amount of the item. Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A., — M —, 521 P 2d 679.

Interest on Judgment

Determination by the court that the bank was liable for payment of dishonored checks by virtue of this section was based on contract law of negotiable instruments, and interest was ordered from the second day after the bank's final receipt of the checks. Sun River Cattle Co. v. Miners' Bank of Montana, — M —, 525 P 2d 19.

"Midnight Rule"—Failure to Give Notice of Dishonor

"Midnight rule" was applicable to payor bank and rendered it liable to payees for face amount of checks presented for collection since: (1) the checks were demand items and section 87A-3-511 (4) was thus inapplicable and did not operate to excuse failure to give timely notice of dishonor; (2) there was no agreement between the parties under section 87A-4-103 excepting bank from strict liability since bank's holding and paying of one check as to each of two of the plaintiffs was not sufficient to form "a sequence of previous conduct" necessary to establish a course of dealing from which an agreement could be implied under sections 87A-1-201 (3) and 87A-1-205 (1); (3) alleged understanding with one payee's agent would not be considered an agreement under section 87A-4-103 in view of bank's unique position as drawers' creditor; (4) any oral notice of dishonor given to one plaintiff was ineffective under the circumstances; and (5) custom and practice were not relevant since their relevancy lay only in establishing what standard should consti-

tute ordinary care and bank was subject to more than ordinary standard of care because of its unique position. Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A., — M —, 521 P 2d 679.

Strict Accountability

Degree of diligence required of payor bank attempting to come under "escape clause" provisions of 87A-4-108 (2) was greater than it would otherwise have been where bank had financed and refinanced drawers of checks and refinancing loans had not yet been completely repaid; evidence that armored car which delivered checks to clearinghouse broke down on day checks were presented by payees and that clearinghouse's computer malfunctioned after checks were received by it the next day was insufficient excuse for bank's delay beyond "midnight deadline" and did not relieve it of liability for face amount of checks under the strict accountability rule imposed by this section where there was no testimony as to what happened on day after checks were received by bank. Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A., — M —, 521 P 2d 679.

CHAPTER 8—INVESTMENT SECURITIES

Part 1—Short Title and General Matters

Section 87A-8-102. Definitions and index of definitions.

Part 3—Purchase

87A-8-320. Transfer or pledge within a central depository system.

Part 1—Short Title and General Matters

87A-8-102. Definitions and index of definitions. (1) and (2) * * * [Same as parent volume.]

(3) A "clearing corporation" is a corporation:

(a) at least 90% of the capital stock of which is held by or for one or more persons, other than individuals, each of whom:

(i) is subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws and does not hold in excess of 20% of the capital stock of the corporation; or

(ii) is a broker or dealer or investment company registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940 and does not hold in excess of 20% of the capital stock of the corporation; or

(iii) is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934; and

(b) any remaining capital stock of which is held by individuals who have purchased such capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such capital stock as may be necessary to permit them to qualify as such directors.

(4) to (6) * * * [Same as parent volume.]

History: En. Sec. 8-102, Ch. 264, L. 1963; amd. Sec. 1, Ch. 278, L. 1977.

Amendments

The 1977 amendment rewrote subsection (3). For prior version, see parent volume.

Part 3—Purchase

87A-8-307. Effect of delivery without endorsement, etc.

DECISIONS UNDER FORMER LAW

Gift of Stock Certificate

Although endorsement may not be absolutely necessary to valid gift of stock certificates, fact that alleged donor had not endorsed certificates as required under former law was evidence that no delivery occurred and hence that there was no valid gift. Bodine v. Bodine, 149 M 29, 422 P 2d 650.

87A-8-319. Statute of frauds.

Option Agreement

Evidence of payment of money pursuant to the purchase of real estate for the purpose of persuading seller to hold the deal open for a certain period of time, and the subsequent actions of the seller in holding the property off the market, were sufficient to establish a valid option agreement, as well as to show that the agreement had been fully performed. Lynch v. Shields, — M —, 529 P 2d 348.

87A-8-320. Transfer or pledge within a central depository system.

(1) to (5) * * * [Same as parent volume.]

(6) Under this section a clearing corporation shall, upon written request, furnish to any issuer within a reasonable time a list disclosing the names of all persons who have securities of the issuer in their account with a depository and including a statement of the principal amount or number of units of each such security of the issuer on deposit. The clearing corporation may charge the issuer a fee for such written list, but the fee shall bear a reasonable relation to the cost of furnishing such list.

History: En. Sec. 8-320, Ch. 264, L. 1963; amd. Sec. 2, Ch. 278, L. 1977.

Amendments

The 1977 amendment added subsection (6).

CHAPTER 9—SECURED TRANSACTIONS—SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

Part 3. Rights of Third Parties—Perfected and Unperfected Security Interests—Rules of Priority

Section 87A-9-302. When filing is required to perfect security interest—security interests to which filing provisions of this chapter do not apply.
87A-9-302.1. Financing statements of transmitting utilities—definitions.
87A-9-302.2. Utility financing statement—place of filing—contents—perfection of security interest.
87A-9-302.3. Continued effectiveness of certain laws.

Part 4. Filing

87A-9-401. Place of filing—erroneous filing—removal of collateral.
87A-9-402. Formal requisites of financing statement—amendments.
87A-9-403. What constitutes filing—duration of filing—effect of lapsed filing—duties of filing officer.
87A-9-404. Termination statement.
87A-9-405. Assignment of security interest—duties of filing officer—fees.
87A-9-406. Release of collateral—duties of filing officer—fees.
87A-9-407. Information from filing officer.

Part 2—Validity of Security Agreement and Rights of Parties Thereto

87A-9-203. Enforceability of security interest, etc.

Compiler's Notes

Sections 53-123 to 53-128, contained in the reference to Chapter 1 of Title 53, in subsection (2) of this section in the parent volume, were repealed by Sec. 1, Ch. 101, Laws 1959. Section 53-138 was repealed by Sec. 5, Ch. 256, Laws 1965.

87A-9-206. Agreement not to assert defenses against assignee, etc.

Assignee Without Notice of Claims or Defenses

In an action for the price by the assignee of a retail sales agreement, fact that the contract contained a provision that "buyer(s) will not set up any claim or defense which he may have against the seller as a defense . . . in any action . . . by the seller's assignee" did not bar the assertion of such defenses where it appeared that the assignee's representative participated in the sale to some degree by orally affirming the promises by the seller which were the basis of buyer's defense, because under such circumstances the assignee did not take the contract "without notice of a claim or defense." Massey-Ferguson Credit Corp. v. Brown, — M —, 547 P 2d 846.

Part 3—Rights of Third Parties—Perfected and Unperfected Security Interests—Rules of Priority

87A-9-302. When filing is required to perfect security interest—security interests to which filing provisions of this chapter do not apply. (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under 87A-9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under 87A-9-304 or in proceeds for a 10-day period under 87A-9-306;

(c) a purchase money security interest in farm equipment having a purchase price not in excess of $2,500; but filing is required for a fixture under 87A-9-313 or for a motor vehicle required to be licensed;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under 87A-9-313 or for a motor vehicle required to be licensed;

(e) * * * [Same as parent volume.]

(f) a security interest of a collecting bank (87A-4-208) or arising under the chapter on sales or covered in subsection (3) of this section.

(2) * * * [Same as parent volume.]

(3) Except for financing statements filed pursuant to 87A-9-302.2, the filing provisions of this chapter do not apply to a security interest in property subject to a statute:

(a) and (b) * * * [Same as parent volume.]

(4) Except for financing statements filed pursuant to 87A-9-302.2, a security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

History: En. Sec. 9-302, Ch. 264, L. 1963; amd. Sec. 13, Ch. 265, L. 1977.

Amendments

The 1977 amendment inserted "Except for financing statements filed pursuant to 87A-9-302.2" at the beginning of subsections (3) and (4); and made minor changes in punctuation and style.

87A-9-302.1. Financing statements of transmitting utilities—definitions. As used in this act,

(a) "Transmitting utility" means: (1) Any corporation or other business entity primarily engaged, pursuant to rights or franchises issued by and subject to the jurisdiction of a state or federal regulatory body, in the railroad or street railway business, the telephone or telegraph business, the transmission of oil, gas or petroleum products by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, and (2) any other corporation primarily engaged in the production, transmission or distribution of electricity, or the furnishing of telephone service, whether or not such corporation is subject to the jurisdiction of a state or federal regulatory body.

(b) "Uniform Commercial Code" means Chapters 1 through 10 of Title 87A of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 76, L. 1965; amd. Sec. 1, Ch. 279, L. 1967.

Title of Act

An act relating to the Uniform Commercial Code of Montana by adding a new section to be known and codified as section 87A-9-408, relating to the filing by certain public utilities of certain instruments required to be filed under the provisions of the Uniform Commercial Code; providing for a repealing clause; providing for a severability clause; and providing for an effective date.

Amendments

The 1967 amendment subdivided subsection (a), designating the first sentence as subsection (a)(1) and adding subsection (a)(2), and made minor changes in punctuation.

87A-9-302.2. Utility financing statement—place of filing—contents—perfection of security interest. (1) If filing is required under the Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility or other corporation covered hereby is in the office of the secretary of state.

(2) When the financing statement covers goods of a transmitting utility which are or are to become fixtures, no description of the real estate concerned is required.

(3) A security interest in rolling stock of a transmitting utility may be perfected either as provided in section 20(c) of the Interstate Commerce Act or by filing a financing statement pursuant to subsection (1).

History: En. Sec. 2, Ch. 76, L. 1965; amd. Sec. 2, Ch. 279, L. 1967; amd. Sec. 14, Ch. 265, L. 1977.

Compiler's Note

Filing provisions of Interstate Commerce Act, see 49 U. S. C., sec. 20c.

Amendments

The 1967 amendment, in the first paragraph, inserted "87A-9-403, 87A-9-404, 87A-9-405 and 87A-9-406" after "87A-9-402"; in subdivision (a), inserted "or other corporation covered hereby" after "transmitting utility."

The 1977 amendment deleted a former preliminary paragraph reading "Financing statements of a transmitting utility, notwithstanding sections 87A-9-302(3), 87A-9-302(4), 87A-9-401(1), 87A-9-402, 87A-9-403, 87A-9-404, 87A-9-405 and 87A-9-406 of the Uniform Commercial Code"; redes-

ignated former subdivisions (a) through (c) as subsections (1) through (3); and made minor changes in phraseology and punctuation.

Repealing Clause

Section 3 of Ch. 279, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 279, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

87A-9-302.3. Continued effectiveness of certain laws. Unless displaced by the specific provisions of this act, the Uniform Commercial Code and other applicable laws remain in full force and effect and supplement the provisions of this act.

History: En. Sec. 3, Ch. 76, L. 1965.

Repealing Clause

Section 4 of Ch. 76, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 5 of Ch. 76, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 6 of Ch. 76, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

87A-9-306. "Proceeds"—secured party's rights, etc.

Application of Proceeds

Where debtor's liquor license had been purchased with advances from bank under security agreement, proceeds from sale of such license were to be applied first to notes secured by such security agreement, then to note secured by an attachment, and finally to other obligations, since sale contract provided that all proceeds were to be placed in escrow with bank to whom all debts were owed. Gallatin Trust & Savings Bank v. Darrah, 153 M 228, 456 P 2d 288.

Res Judicata

Bankruptcy court's rulings that bankrupt did not exchange collateral within twelve months of petition in bankruptcy and that bankrupt did not hold legal title to property received in exchange did not preclude holder of security interest in the collateral from attempting to trace the collateral, and the holder was not liable for malicious prosecution even though it was later held that the security interest was unperfected because filed in the wrong office. 3-D Lumber Co. v. Belgrade State Bank, 157 M 481, 487 P 2d 1136.

Unperfected Security Interest

Subsection (2) did not apply and holder of security interest was not allowed to trace the proceeds of collateral exchanged, where the security interest had not been perfected because it had been filed in the wrong office. Belgrade State Bank v. Elder, 157 M 1, 482 P 2d 135.

87A-9-312. Priorities among conflicting security interests, etc.

DECISIONS UNDER FORMER LAW

Ranking of Priorities

Under statute making liquor license transferable personal property capable of being mortgaged to secure existing debt and other statute providing that mortgage first given, acknowledged and recorded was entitled to priority, owner of note secured by properly recorded mortgage on liquor license was entitled to foreclose mortgage notwithstanding claim of lessor based on covenant in lease whereby lessee agreed not to move liquor license from property. Gaskill v. Severovic, 149 M 340, 426 P 2d 582.

Part 4—Filing

87A-9-401. Place of filing—erroneous filing—removal of collateral. (1) Except for financing statements filed pursuant to 87A-9-302.2, the proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or farm products, or accounts, contract rights, or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county clerk and recorder in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept, and in addition when the collateral is crops in the office of the county clerk and recorder in the county where the land on which the crops are growing or to be grown is located;

(b) and (c) * * * [Same as parent volume.]

(2) and (3) * * * [Same as parent volume.]

(4) If collateral is brought into this state from another jurisdiction, the rules stated in 87A-9-103 determine whether filing is necessary in this state.

History: En. Sec. 9-401, Ch. 264, L. 1963; amd. Sec. 15, Ch. 265, L. 1977.

Amendments

The 1977 amendment inserted "Except for financing statements filed pursuant to 87A-9-302.2" at the beginning of subsection (1); and made minor changes in punctuation and style.

Forestry and Logging

Forestry and logging are not farming for the purposes of subdivision (1)(a) of this section; filing with the secretary of state is necessary to perfect a security interest on equipment used for that purpose. Belgrade State Bank v. Elder, 157 M 1, 482 P 2d 135.

87A-9-402. Formal requisites of financing statement—amendments. (1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. Except for financing statements filed pursuant to section 87A-9-302.2, R.C.M. 1947 when the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned and the name of the record owner or record lessee thereof. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(2). * * * [Same as parent volume.]

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) _____

Address _____

Name of secured party (or assignee) _____

Address _____

Name of record owner or record lessee _____

Address _____

1. to 4. * * * [Same as parent volume.]

(4) and (5). * * * [Same as parent volume.]

History: En. Sec. 9-402, Ch. 264, L. 1963; amd. Sec. 1, Ch. 272, L. 1967.

Amendments

The 1967 amendment, in subsection (1), inserted "Except for financing statements filed pursuant to section 87A-9-302.2, R. C. M. 1947" at the beginning of the third sentence and added "and the name of the record owner or record lessee thereof" after "real estate concerned"; and, in subsection (3), inserted after the name and address of the secured party "Name of record owner or record lessee" and "Address."

Effect of Noncompliance with this Section

Where financing statement described the real property to which fixtures were to be attached but did not describe the fixtures themselves, it was erroneous, but the error did not convert the statement into a mortgage, nor did it purport to claim an interest in real property, by virtue of 87A-9-104(j). First Security Bank of Bozeman v. Tholkes, — M —, 547 P 2d 1328.

87A-9-403. What constitutes filing—duration of filing—effect of lapsed filing—duties of filing officer. (1). * * * [Same as parent volume.]

(2) A filed financing statement which states a maturity date of the obligation secured of five (5) years or less is effective until such maturity date and thereafter for a period of sixty (60) days. Any other filed financing statement is effective for a period of five (5) years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty-day period after a stated maturity date or on the expiration of such five-year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for five (5) years from the date of filing.

(3) A continuation statement may be filed by the secured party (i) within six (6) months before [and] sixty (60) days after a stated maturity date of five (5) years or less, and (ii) otherwise within six (6) months prior to the expiration of the five-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five (5) years after the last date to which the filing was effective whereupon its lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(4). * * * [Same as parent volume.]

(5) Except financing statements filed pursuant to section 87A-9-302.2, R.C.M., 1947, if the instrument covers crops growing or to be grown or goods which are, or are to become fixtures, or timber, said instrument

shall be indexed in accordance with the requirements applicable to the recording of mortgages of real estate under the laws of this state. For the purpose of such indexing, each of the debtor (or assignor) and the record owner or record lessee of any real estate described in the financing statement shall be considered a mortgagor with respect to the financing statement and the secured party (or assignee) shall be considered a mortgagee with respect to the financing statement.

(6) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data for an original or a continuation statement shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be two dollars ($2).

History: En. Sec. 9-403, Ch. 264, L. 1963; amd. Sec. 2, Ch. 272, L. 1967; amd. Sec. 4, Ch. 185, L. 1971.

Amendments

The 1967 amendment added a new subsection (5); redesignated old subsection (5) as new subsection (6); and substituted "data" for "date" after "furnishing filing" in the second sentence.

The 1971 amendment increased the fee specified at the end of subsection (6) from one dollar to two dollars; deleted from the end of subsection (6) a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such original or continuation statement"; and made minor changes in style.

87A-9-404. Termination statement. (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number, and by document number, as the case may be. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof shall be two dollars ($2). If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars ($100), and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the termination statement must be indexed in accordance with the requirements applicable to releases of real estate mortgages.

(3) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and indexing a termination statement

including sending or delivering the financing statement shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be two dollars ($2).

History: En. Sec. 9-404, Ch. 264, L. 1963; amd. Sec. 3, Ch. 272, L. 1967; amd. Sec. 5, Ch. 185, L. 1971.

Amendments

The 1967 amendment, added "and by document number, as the case may be" after "by file number" in the first sentence of subsection (1); and, inserted the third sentence in subsection (2).

The 1971 amendment increased the fees specified at the end of the third sentence of subsection (1) and at the end of the second sentence of subsection (3) from one dollar to two dollars; deleted from the end of the third sentence of subsection (1) a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such assignment or statement"; deleted from the end of subsection (3) a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such termination statement"; and made minor changes in style.

87A-9-405. Assignment of security interest—duties of filing officer—fees. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in 87A-9-403 (4). If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be $15. In all other cases the uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be $2.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement, the name and address of the assignee, and except as provided in 87A-9-302.2(b), a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of assignment must contain a reference to the document number of such original or continuation statement and must be indexed in accordance with the requirements applicable to assignments of mortgages. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data about such a separate statement of assignment shall be $15. In all other cases the uniform fee for filing,

indexing, and furnishing filing data about such a separate statement of assignment shall be $2.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

History: En. Sec. 9-405, Ch. 264, L. 1963; amd. Sec. 4, Ch. 272, L. 1967; amd. Sec. 6, Ch. 185, L. 1971; amd. Sec. 16, Ch. 265, L. 1977.

Amendments

The 1967 amendment substituted "data" for "date" in the fifth sentence of subsection (1); and inserted the fifth sentence in subsection (2).

The 1971 amendment increased the fees specified at the end of subsection (1) and at the end of subsection (2) from one dollar to two dollars; and deleted from the end of each of such subsections a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such statement."

The 1977 amendment inserted "and except as provided in 87A-9-302.2(b)" in the first sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

87A-9-406. Release of collateral—duties of filing officer—fees. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released (except as provided in 87A-9-302.2(b)), the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of release must contain a reference to the document number of such original or continuation statement, and must be indexed in accordance with the requirement applicable to release of mortgages. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and noting such a statement of release shall be $15. In all other cases the uniform fee for filing and noting such a statement of release shall be $2.

History: En. Sec. 9-406, Ch. 264, L. 1963; amd. Sec. 5, Ch. 272, L. 1967; amd. Sec. 7, Ch. 185, L. 1971; amd. Sec. 17, Ch. 265, L. 1977.

Amendments

The 1967 amendment inserted the fourth sentence.

The 1971 amendment increased the fee specified at the end of the section from one dollar to two dollars; deleted from the end of the section a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such statement"; and made a minor change in phraseology.

The 1977 amendment inserted the parenthetical exception in the second sentence; and made minor changes in style.

Repealing Clause

Section 6 of Ch. 272, Laws 1967 repealed all acts and parts of acts in conflict therewith.

87A-9-407. Information from filing officer. (1). * * * [Same as parent volume.]

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular

debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the name and addresses of each secured party therein. The uniform fee for such a certificate shall be three dollars ($3). Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of fifty cents (50¢) per page.

History: En. Sec. 9-407, Ch. 264, L. 1963; amd. Sec. 8, Ch. 185, L. 1971.

Amendments

The 1971 amendment substituted "three dollars ($3.00)" at the end of the second sentence of subsection (2) for "one dollar ($1.00) plus thirty cents (30¢) for each financing statement and for each statement of assignment reported therein"; and made a minor change in phraseology.

Part 5—Default

87A-9-503. Secured party's right to take possession after default.

When Right Accrues

Secured party's right to possession of collateral accrues immediately upon default of provisions of security agreement. Fairchild v. Williams Feed, Inc.,— M —, 544 P 2d 1216.

87A-9-504. Secured party's right to dispose of collateral after default, etc.

Commercially Reasonable Disposition of Property

Sale of business machinery at private sale for $300 was not commercially unreasonable where guarantors of lease were given advance notice of the sale and declined to bid over $300 for the property; that one of the business machines was later placed on sale to the public for $295 failed to show the sale to be commercially unreasonable since the increase in price was normal, taking into account the expenses of preparation for sale and the commercial mark-up common to the particular trade. Business Finance Co., Inc. v. Red Barn, Inc., — M —, 517 P 2d 383.

Notice

Oral notice to debtor of time and, in case of public sale, place of disposition of goods after foreclosure is sufficient under subsection (3) of this section. Fairchild v. Williams Feed, Inc., — M —, 544 P 2d 1216.

Sale as a Unit Is Reasonable

Indication that a better price could have been received at foreclosure sale of a mountain logger, if it had been sold for parts, was not evidence that the sale was unreasonable, since the Uniform Commercial Code does not require the secured creditor to disassemble the collateral and sell it piece by piece. James Talcott, Inc. v. Reynolds, — M —, 529 P 2d 352.

87A-9-505. Compulsory disposition of collateral, etc.

Effect of Notice of Intent to Sell Pledged Collateral

Defaulting debtors could not rely on subsection 2 of this section to contend that secured party's actions in achieving a sale constituted a rescission and satisfaction of the debt so as to bar further recovery where defaulting debtors were given notice of an intent to enforce security interest by means of a sale of pledged collateral and where secured party obtained a writ of mandate ultimately effectuating a sale. Stensvad v. Miners and Merchants Bank of Roundup, — M —, 517 P 2d 715.

DECISIONS UNDER FORMER LAW

Conditional Sales Contract

Upon default of conditional sales contract, seller could treat contract as existing but broken by buyer and maintain action for damages for breach under former statute. White v. Nollmeyer, 151 M 387, 443 P 2d 873.

87A-9-507. Secured party's liability for failure to comply with this part.

Commercially Reasonable

The reasonableness of the sale is determined, not by the price that is ultimately received for the collateral, but by the manner in which the sale is conducted; and where defendant acted in good faith and even transported collateral to auction in another state hoping to find a better market, he conducted the sale in a commercially reasonable manner. James Talcott, Inc. v. Reynolds, — M —, 529 P 2d 352.

Compliance with Notice Provisions

Plaintiff complied with the notice provisions of the Uniform Commercial Code when he sent notice of foreclosure sale to debtor by ordinary mail, since the receipt of mail is presumed if the procedure of the mailing is carried out in a regular manner. James Talcott, Inc. v. Reynolds, — M —, 529 P 2d 352.

TITLE 88—WAREHOUSES AND STORAGE

CHAPTER 2—LOCATION OF WAREHOUSES AND ELEVATORS ON RAILROAD RIGHT OF WAY

88-207. (6644) Connection of railroad with elevator—sidetracks.

Compiler's Notes

Section 21, Ch. 315, Laws 1974, substituted "public service commission" in this section for "board of railroad commissioners of the state of Montana."

TITLE 89—WATERS AND IRRIGATION

Chapter 1. Water Resources Act, 89-101.1, 89-101.2, 89-102, 89-102.1, 89-103.2, 89-103.7, 89-104 to 89-106, 89-111, 89-113 to 89-115, 89-116.1, 89-117 to 89-120, 89-124, 89-125, 89-127, 89-132.1, 89-140, 89-142.
3. Weather modification activities, 89-310, 89-312 to 89-331.
4. Water conservation moneys, 89-401, 89-402.
7. Dams and reservoirs—construction and examination of, 89-702 to 89-702.2, 89-714.
8. Water rights—appropriation and adjudication, 89-806, 89-823, 89-865 to 89-8-111.
9. Yellowstone River Compact—ratification of, 89-906 to 89-909, 89-911, 89-912, 89-914 to 89-916.
10. Water commissioners—determination of joint rights, 89-1001, 89-1015.
11. Water users' associations organized under federal law, 89-1107.
12. Irrigation districts—organization, 89-1201, 89-1202, 89-1204, 89-1205, 89-1208, 89-1215, 89-1220.
13. Irrigation districts—board of commissioners, powers, duties and elections, 89-1301, 89-1303, 89-1311, 89-1319, 89-1320, 89-1322.
14. Irrigation districts—extension—change in boundaries of area—court procedure, 89-1411.
16. Irrigation districts—rights of way—use and apportionment of water, 89-1607, 89-1616.
17. Irrigation districts—bonds, 89-1701 to 89-1706, 89-1708, 89-1712, 89-1713.
18. Irrigation districts—taxes and assessments, 89-1801, 89-1803 to 89-1806, 89-1811, 89-1812, 89-1816, 89-1819.
19. Irrigation districts—limitation of indebtedness—validation of warrants—bankruptcy—financial aid, 89-1905.
20. Irrigation districts—dissolution, 89-2003.
21. Irrigation districts—appeals—miscellaneous provisions, 89-2107, 89-2109, 89-2126.
22. Drainage districts—petition for creation—court procedure thereon, 89-2203.
23. Drainage districts—commissioners—election—organization—reports, 89-2302, 89-2330 to 89-2330.3, 89-2332 to 89-2334, 89-2337, 89-2338, 89-2348.
24. Drainage districts—taxes and assessments, 89-2401, 89-2405, 89-2410, 89-2411.
25. Drainage districts—bonds—refunding indebtedness, 89-2501, 89-2502.
27. Drainage districts—continuation and alteration of existing districts, 89-2701, 89-2711.
28. Drainage districts—miscellaneous provisions, 89-2810.
29. Appropriation and regulation of ground water, 89-2911, 89-2914 to 89-2918, 89-2926, 89-2927, 89-2928.1, 89-2929 to 89-2934.1, 89-2936.
32. Columbia Interstate Compact—ratification, Repealed—Section 1, Chapter 464, Laws of 1977.
33. County and municipal participation in flood control and water conservation, 89-3301 to 89-3314.
34. Conservancy districts, 89-3401 to 89-3449.
35. Floodway management and regulation, 89-3501 to 89-3515.
36. Renewable resource development, 89-3601 to 89-3609.
37. Protection of lake areas, 89-3701 to 89-3712.

CHAPTER 1—WATER RESOURCES ACT

Section **89-101.1. Short title.**
89-101.2. State necessity and policy.
89-102. Definitions.
89-102.1. Rules of board.
89-103.2. Powers and duties of department subject to approval of board.
89-103.7. Yellowstone compact obligations unimpaired.
89-104. Acquisition of necessary property.
89-105. Construction of works by department.

89-106. Department may construct irrigation works across streams, highways, etc.
89-111. Trust indenture, resolution and covenants of board.
89-113. Funds.
89-114. Construction funds.
89-115. Management of property—water contracts.
89-116.1. Disposition of moneys received from sale of water.
89-117. Contracts with the United States.
89-118. Powers and duties of department—actions at law.
89-119. Actions by trustee and bondholders.
89-120. Limitation of liability—receipt of contributions and appropriations authorized.
89-124. Conformity to federal regulations authorized.
89-125. Department powers over state waters.
89-127. Sale or disposal of waters—disposal of waterworks systems, provision for.
89-132.1. State water plan.
89-140. State agencies and counties may contract with department.
89-142. Department of natural resources and conservation authorized to negotiate with other states regarding interstate waters.

89-101. (349.1) Repealed.

Repeal

This section (Sec. 1, Ch. 35, Ex. L. 1933), relating to the state purpose of water conservation, was repealed by Sec. 7, Ch. 158, Laws 1967.

89-101.1. Short title. This chapter shall be known and may be cited as the "Montana Water Resources Act."

History: En. Sec. 1, Ch. 158, L. 1967; amd. Sec. 118, Ch. 253, L. 1974.

Title of Act

An act providing for the Montana Water Resources Act of 1967; providing an expanded statement of state necessity and policy relating to water resources; amending section 89-103, R. C. M. 1947, providing that name of the state water conservation board shall be changed to Montana water resources board; providing additional powers for the Montana water resources board; providing for a comprehensive inventory of water resources; providing for a state water plan; amending section 89-102, R. C. M. 1947, providing additional definitions; amending section 89-813, R. C. M. 1947, providing that county clerks and recorders shall furnish the Montana water resources board with copies of water appropriations and transfers of water appropriations; and repealing section 89-101, R. C. M. 1947.

Amendments

The 1974 amendment substituted "chapter" for "act" and deleted "of 1967" after "Water Resources Act."

89-101.2. State necessity and policy. It is hereby declared that:

(1) The general welfare of the people of Montana, in view of the state's population growth and expanding economy, requires that water resources of the state be put to optimum beneficial use and not wasted.

(2) The public policy of the state is to promote the conservation, development and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.

(3) The state, in the exercise of its sovereign power, acting through the department of natural resources and conservation shall co-ordinate the development and use of the water resources of the state so as to effect full utilization, conservation and protection of its water resources.

(4) The development and utilization of water resources, and the efficient, economic distribution thereof, are vital to the people in order to

protect existing uses and to assure adequate future supplies for domestic, industrial, agricultural and other beneficial uses.

(5) The water resources of the state must be protected and conserved to assure adequate supplies for public recreational purposes and for the conservation of wildlife and aquatic life.

(6) The public interest requires the construction, operation and maintenance of a system of works for the conservation, development, storage, distribution and utilization of water, which construction, operation and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state.

(7) It is necessary to co-ordinate local, state and federal water resource development and utilization plans and projects through a single agency of state government, the department of natural resources and conservation.

(8) The greatest economic benefit to the people of Montana can be secured only by the sound co-ordination of development and utilization of water resources with the development and utilization of all other resources of the state.

(9) To achieve these objectives, and to protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive, co-ordinated multiple-use water resource plan be progressively formulated, to be known as the "state water plan."

History: En. Sec. 2, Ch. 158, L. 1967; amd. Sec. 119, Ch. 253, L. 1974.

Amendment

The 1974 amendment substituted references to "department of natural resources and conservation" for references to "water resources board" in subdivisions (3) and (7) and made minor changes in phraseology.

89-102. (349.2) **Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(2) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

(3) "Works" means all property, rights, easements and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the department in connection with those works, and includes all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines and waterworks systems and includes all such works for the conservation, development, storage, distribution and utilization of water including, without limiting the generality of the foregoing, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial or other uses, and for fire protection.

(4) "Cost of works" means the cost of construction, the cost of all lands, property, rights, easements and franchises acquired, which are

deemed necessary for the construction, the cost of all water rights acquired or exercised by the department in connection with those works, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three (3) years after the completion of construction, cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized and the construction of the works and the placing of the same in operation; however, the department in determining the cost of works may make nonreimbursable allowances for costs of public benefits, including, but not limited to, irrigation, recreation, flood prevention, fish and wildlife, and stream stabilization.

(5) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies or associations having any title or interest in any properties, rights, easements or franchises to be acquired.

(6) "Project" means any one of the works hereinabove defined or any combination of such works which are physically connected or jointly managed and operated as a single unit.

(7) If water rights are acquired or exercised by the department in connection with two (2) or more works or projects, the department by order shall apportion or allocate to each of the works or projects such part of those water rights as it may determine, and upon the adoption of the order, those water rights shall be considered a part of each of the works or projects to the extent that the water rights have been so apportioned or allocated thereto respectively.

History: En. Sec. 2, Ch. 35, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; amd. Sec. 1, Ch. 163, L. 1965; amd. Sec. 3, Ch. 158, L. 1967; amd. Sec. 120, Ch. 253, L. 1974.

Amendments

The 1965 amendment inserted "waste canals, drainage canals, dikes" in paragraph (b); inserted "flood prevention, drainage, fish and wildlife, recreation" near the end of paragraph (b); substituted "industrial or other uses and for fire protection" at the end of paragraph (b) for "industrial and other uses for fire protection"; added the proviso at the end of paragraph (c); and inserted "drainage districts, flood control districts" in paragraph (d).

The 1967 amendment, in subdivision (a), substituted "Montana water resources" for "state water conservation."

The 1974 amendment rewrote the introductory clause which read: "As used in this act, the following words and terms shall have the following meanings"; inserted subdivision (1); designated former subdivisions (a) to (f) as (2) to (7); rewrote present subdivision (2) which defined "board" as the water resources board; substituted "department" for "board" in present subdivisions (3), (4) and (7); substituted "order" for "resolution" in two instances in present subdivision (7); and made minor changes in phraseology and punctuation.

89-102.1. Rules of board. The board may adopt from time to time, as necessary or expedient, suitable rules for the administration of this chapter.

History: En. 89-102.1 by Sec. 121, Ch. 253, L. 1974.

89-103, 89-103.1. (349.3) Repealed.

Repeal

Sections 89-103 and 89-103.1 (Sec. 3, Ch. 35, Ex. L. 1933; Sec. 50, Ch. 177, L. 1965; Sec. 1, Ch. 278, L. 1965; Sec. 1,

Ch. 279, L. 1965; Sec. 4, Ch. 158, L. 1967), relating to the water resources board and its director, were repealed by Sec. 108, Ch. 253, Laws of 1974.

89-103.2. Powers and duties of department subject to approval of board. The department may not acquire by appropriation or otherwise a water right or interest therein and may not acquire real property or an interest therein (except rights of access for the purpose of construction, operation, or maintenance of works) or mortgage or otherwise create a lien on the same or dispose of in any manner water rights or real property or interest therein without prior approval of the board. The department may not construct or cause to be constructed or contract for the construction of works or projects without prior approval of the board. The department may not loan funds to a person or water user association for the purpose of constructing or maintaining works without prior approval of the board.

History: En. Sec. 2, Ch. 279, L. 1965; amd. Sec. 122, Ch. 253, L. 1974.

Amendments

The 1974 amendment deleted "The director shall be the chief administrative office [officer] of the state water conservation board and shall perform and execute in the name of the board all ministerial acts required of the state water conservation board by law and shall perform and execute such other duties as may be required by said board, provided that" at the beginning of the section; substituted "department" for "director" at the beginning of the first and second sentences; inserted "except rights of access for the purpose of construction, operation, or maintenance of works" in the first sentence; substituted "real property or interest therein without prior approval of the board" for "property without specific authorization from and approval of said board" at the end of the first sentence; substituted "prior approval of the board" for "specific authorization from and approval of said board" at the end of the second sentence; added the third sentence and made minor changes in phraseology and punctuation.

89-103.3 to 89-103.6. Repealed.

Repeal

Sections 89-103.3 to 89-103.6 (Sec. 3, Ch. 279, L. 1965; Secs. 17 to 19, Ch. 280, L. 1965; Sec. 14, Ch. 237, L. 1967), relating to salary of director and transfer of powers, records, property and funds of Carey Land Act board and state engineer to water resources board, were repealed by Sec. 108, Ch. 253, Laws of 1974.

89-103.7. Yellowstone compact obligations unimpaired. Nothing in this act contained shall in any manner impair the obligations of the state of Montana under the Yellowstone River Compact.

History: En. Sec. 20, Ch. 280, L. 1965.

Title of Act

An act repealing sections 81-2006, 81-2008, 81-2010, 81-2012, R. C. M. 1947, thereby abolishing the office of state engineer; amending sections 81-2009, 81-2018, 82-3001, 89-702, 89-847, 89-848, 89-849, 89-851, 89-907, 89-908, 89-909, 89-912, 89-914, 89-1201, and 89-2911, R. C. M. 1947, to provide for the transfer of certain duties of the state engineer to the state water conservation board; abolishing the Carey Land Act board; repealing sections 81-2001, 81-2002, 81-2003, 81-2004, 81-2005, 81-2007, 81-2013, 81-2015, 81-2017, 81-2101 through 81-2121, 81-2123 and 81-2125 through 81-2130, R. C. M. 1947; providing for the transfer of the book and records and funds of the Carey Land Act board and the office of the state engineer to the state water conservation board; and providing that nothing in this act contained shall impair the obligations of the state of Montana under the Yellowstone River Compact or the obligations of the state of Montana, or the state water conservation board contracted prior to the effective date of this act.

Repealing Clause

Section 22 of Ch. 280, Laws 1965 read "Sections 81-2001, 81-2002, 81-2003, 81-2004, 81-2005, 81-2007, 81-2013, 81-2015, 81-2017, 81-2101 through 81-2121, 81-2123 and 81-2125 through 81-2130, R. C. M. 1947, are repealed."

89-103.8. Repealed.

Repeal

Section 89-103.8 (Sec. 21, Ch. 280, L. 1965), providing that nothing in the act should impair any prior obligations of the state, water conservation board or Carey Land Act board, was repealed by Sec. 108, Ch. 253, Laws of 1974.

89-104. (349.4) **Acquisition of necessary property.** (1) The department, subject to the approval of the board under section 89-103.2, may acquire by purchase, or exchange upon terms and conditions and in a manner it considers proper, and acquire by condemnation in accordance with laws applicable to the condemnation of property for public use, any land, rights, water rights, easements, franchises and other property considered necessary for the construction, operation and maintenance of works. Title to property purchased or condemned shall be taken in the name of the department. The department is under no obligation to accept and pay for any property condemned under this act except from the funds provided by this act, and in any proceedings to condemn, orders may be made by the court having jurisdiction of the suit, action or proceeding as may be warranted by law and the facts.

(2) In condemnation proceedings brought under the the powers of eminent domain for the purpose of carrying out this act, all persons interested in the title of or holding liens upon the property sought to be acquired as disclosed by the public records, shall be made parties, and the court in the action shall partition and distribute the damages awarded, if any, among those persons as their rights appear. If there is controversy between them the court may direct the amount of the damage awarded to be paid into court to abide the result of further appropriate proceedings either at law or in equity.

(3) The taking possession of the property sought to be condemned may not be delayed by reason of any dispute between the rival claimants or the failure to join any of them as a party to the proceedings in condemnation.

History: En. Sec. 4, Ch. 35, Ex. L. 1933; amd. Sec. 123, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted the subsection designations; substituted "department" for "board" in three places in subsection (1); inserted "subject to the approval of the board under section 89-103.2" near the beginning of subsection (1); and made minor changes in phraseology throughout the section.

89-105. (349.5) **Construction of works by department.** (1) Subject to the approval of the board, the department may construct works, the cost of the construction to be paid wholly by means of or with the proceeds of revenue bonds hereinafter authorized or of a grant to aid in financing the construction from the United States or any instrumentality or agency thereof and other funds provided for the construction. Before constructing a project, the department shall estimate the cost of the project, the cost of maintaining, repairing, and operating it, and the revenues to be derived therefrom, and a project may not be constructed unless, according to the estimates, the revenues to be derived will be sufficient to pay the cost of maintaining, repairing, and operating it and to pay the principal and interest of revenue bonds which may be issued

for the cost of the project; however, in connection with the issuance of revenue bonds, the failure of the department to make the estimates required by this section or to make them in proper form does not affect the validity or enforceability of those bonds or of the trust indenture, resolution, or other security therefor.

(2) Should the bid of the lowest responsible bidder on any capital improvement associated with public works exceed the department estimates of the cost of the improvements by more than 5%, the department shall obtain approval from the water user association, whenever an association is involved, before the bid is accepted; however, capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require such approval.

(3) A purpose of this act is to meet, so far as possible, a statewide need for the conservation and use of water through the construction and operation of projects designed for those purposes. The projects to be finally constructed shall qualify as parts of the statewide program and shall be approved by the board upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation, maintenance, and repair and the amortization of the cost of the construction. The failure of the board to determine the prospective ability of a project does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or other security therefor.

(4) The department may exercise any of its powers:

(a) in an adjoining state, unless the exercise of that power is not permitted under the laws of that state or of the United States;

(b) in a national forest or public domain of the United States adjoining or located in the state of Montana, unless the exercise of those powers is not permitted under the laws of the United States;

(c) in an adjoining country, unless the exercise of those powers is not permitted under the laws of that country or of the United States or under the treaties between that country and the United States.

History: En. Sec. 5, Ch. 35, Ex. L. 1933; amd. Sec. 2, Ch. 95, L. 1935; amd. Sec. 1, Ch. 278, L. 1973; amd. Sec. 124, Ch. 253, L. 1974; amd. Sec. 1, Ch. 460, L. 1977.

Amendments

The 1973 amendment substituted "department" for "board" near the beginning of the second sentence in the first paragraph; and inserted the second paragraph.

The 1974 amendment inserted the subsection designations; inserted "Subject to the approval of the board" at the beginning of subsection (1); substituted "department" for "board" throughout the section; substituted "water user association" for "works user association" in subsection (2); deleted the proviso at the end of subdivision 4(c) in the parent volume; and made minor changes in phraseology.

The 1977 amendment substituted "for the construction" at the end of the first sentence of subsection (1) for "under the authority of this act"; deleted "as defined in this section" after "public works" in subsection (2); inserted "whenever an association is involved" in subsection (2); deleted the second sentence of subsection (3) which authorized the department to make investigations; and made minor changes in phraseology, punctuation and style.

89-106. Department may construct irrigation works across streams, highways, etc. (1) The department may construct irrigation works across any stream of water, watercourse, streets, avenues, highways, railways,

canals, ditches or flumes in such manner as to afford security to life and property. The department shall restore the same, when so crossed or intersected, to its former state, as near as may be, so as not to destroy its usefulness. A company whose railroads are intersected or crossed by the works shall unite with the department in forming the intersection and crossing. If the railroad company and the department, or the owners and controllers of the property, thing, or franchise so to be crossed cannot agree upon the amount to be paid therefor, or the points or the manner of the crossing or intersections, the amount shall be ascertained and determined in all respects as herein provided in respect to taking of land for public use.

(2) This section does not require the payment to the state or any subdivision thereof, of a sum for the right to cross a public highway with the works. A right of way is hereby given, dedicated, and set apart to locate, construct, and maintain the works over and through the lands which are the property of this state.

History: En. Sec. 1, Ch. 69, L. 1937; amd. Sec. 125, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted the subsection designations; substituted "department" for "state water conservation board" and, in three instances, for "board" in subsection (1); deleted "which the route of said canal or canals may intersect or cross" after "flumes" in subsection (1); and made minor changes in phraseology and punctuation.

89-107, 89-108. Repealed.

Repeal

Sections 89-107 and 89-108 (Secs. 1, 2, Ch. 155, L. 1937), authorizing the water conservation board to construct the Sidney pumping project and divert water from the Yellowstone river, were repealed by Sec. 108, Ch. 253, Laws of 1974.

89-111. (349.8) Trust indenture, resolution and covenants of board. (1) In the discretion of the board, a series of the bonds may be secured by a trust indenture by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart thereof shall be filed in the office of the secretary of state of Montana. The filing of a trust indenture or an executed counterpart thereof in the office of the county clerk of the county in which the property covered by the trust indenture is located is constructive notice of its contents to all persons from the time of the filing, and the recording of the trust indenture or its contents is not necessary.

(2) Either the resolution providing for the issuance of bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper, not in violation of law, including covenants setting forth the duties of the state, the board, and the department in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the works, the custody, safeguarding and application of all moneys, and it may provide that the works shall be acquired, constructed, or partly acquired and partly constructed and paid for under the supervision and approval of consulting engineers employed or designated by the depart-

ment and satisfactory to the original purchasers of the bonds issued therefor, their successors, assigns, or nominees, who may be given the right to require that security given by contractors and by any depositary of the proceeds of the bonds or receipts and revenues of the works, or other moneys pertaining thereto, shall be satisfactory to the purchasers, successors, assigns, or nominees. The resolution or indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual rights of action of bondholders as is customary in trust indentures, deeds of trusts and mortgages securing bonds or debentures of corporations. No enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained. All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation and repairs of the works affected by the indenture.

(3) In connection with the issuance of the bonds for the purpose of paying in whole, or as supplemented by a grant from the United States or any instrumentality or agency thereof, the cost of the works or project, or in order to secure the payment of the bonds, the board may:

(a) Pledge all or any part of the income, profit and revenue of the works or project, and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale or other disposition of all or any part of the works or project, and covenant to pay the income, profit and revenue into the appropriate water fund and sinking fund.

(b) Covenant against pledging all or any part of the income, profit and revenue of the works or project and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale or other disposition of all or any part of the works or project.

(c) Covenant against mortgaging all or any part of the works or project, or against permitting or suffering any lien thereon.

(d) Covenant to fix and establish such prices, rates and charges for water and other services made available in connection with the works or project so as to provide at all times funds which will be sufficient, (1) to pay all costs of operation and maintenance of the works or project together with necessary repairs thereto, and (2) to meet and pay the principal and interest of all the bonds as they severally become due and payable, and (3) to create such reserves for the principal and interest of all the bonds and for the meeting of contingencies in the operation and maintenance of the works or project as the board determines; and make such further covenants as to such prices, rates and charges as the board determines.

(e) Create special funds, in addition to those required by this act, for moneys reserved for principal and interest on bonds or for the meeting of contingencies in the operation and maintenance of the works or project and determine the manner in which, and the depositary or depositaries in which, those funds shall be deposited and the manner in which they shall be secured, and it is lawful for any bank or trust company incorpo-

rated under the laws of the state to act as that depositary and to furnish such indemnifying bonds or to pledge such securities as required by the board.

(f) Provide for the replacement of lost, destroyed or mutilated bonds.

(g) Covenant against extending the time for the payment of the principal or interest on any of the bonds, directly or indirectly by any means or in any manner.

(h) Prescribe and covenant as to the events of default and terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived.

(i) Covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation.

(j) Vest in a trustee or trustees the right to enforce any covenant made to secure or to pay the bonds, or to foreclose any trust indenture in relation thereto, provide for the powers and duties of the trustee or trustees, limit the liabilities thereof, and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce the covenant or exercise the right of foreclosure.

(k) Make such covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure the bonds, or, in the absolute discretion of the board, to make the bonds more marketable, notwithstanding that the covenants, acts or things may not be enumerated or expressly authorized herein.

(l) Do all things in the issuance of the bonds, and provide for their security, not inconsistent with the constitution of Montana.

History: En. Sec. 8, Ch. 35, Ex. L. 1933; amd. Sec. 3, Ch. 95, L. 1935; amd. Sec. 126, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted "and the department" after "board" and substituted "department" for "board" in subsection (2); and made minor changes in phraseology and punctuation.

89-113. (349.10) **Funds.** The board shall create a fund to be known as "administration fund" and shall also create three (3) separate funds in respect of the bonds of each series, one (1) fund to be known as the "construction fund, series . . .," another fund to be known as the "water fund, series . . .," and another fund to be known as the "sinking fund, series . . .," each fund to be identified by the same series letter or letters as the bonds of the series. The moneys in each fund shall be deposited in such depository or depositories and secured in such manner as determined by the board. It is lawful for any bank or trust company incorporated under the laws of this state to act as the depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the board. A separate account shall be kept in each construction fund and in each water fund for each project. All expenditures not properly chargeable to the construction fund account or to the water fund account of any one project shall be charged by the department in such proportions as

it shall determine to the construction fund accounts or to the water fund accounts, as the case may be, of the projects in respect of which the expenditures were incurred.

History: En. Sec. 9, Ch. 35, Ex. L. 1933; amd. Sec. 127, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board" in the last sentence; and made minor changes in phraseology.

89-114. (349.11) **Construction funds.** The proceeds of the bonds of each series issued under this act shall be placed to the credit of the appropriate construction fund, which fund shall at all times be kept segregated and set apart from all other funds. There shall also be credited to the appropriate construction fund all accrued interest upon the bonds and the interest received upon the deposits of moneys in the fund and moneys received by way of grant from the United States or from any other source for the construction of the works. The moneys in each construction fund shall be paid out or disbursed in such manner as may be determined by the department, subject to this act, to pay the cost of the works. Any surplus which may remain in any construction fund after providing for the payment of the cost of the works shall be added to and become a part of the appropriate sinking fund hereinafter provided for.

History: En. Sec. 10, Ch. 35, Ex. L. 1933; amd. Sec. 128, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board" in the third sentence; and made minor changes in phraseology.

89-115. (349.12) **Management of property—water contracts.** (1) Subject to this act and 89-103.2, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this act may be sold and disposed of and enter into contracts and agreements and do those things which in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this act, under such general rules, and upon such terms, limitations, and conditions as it prescribes. The department shall enter into the contracts and fix and establish the prices, rates, and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of the works authorized by this act, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable. This act does not authorize any change, alteration, or revision of those rates, prices, or charges as established by any contract entered into under this act except as provided by the contract.

(2) An incorporated water users' association that is sustaining and responsible for the operations of a works is solely liable for any court action which may be brought against it for any injury or damages occurring on the works caused by a failure to maintain safe working and operating conditions. The state of Montana is not liable for injury to a person or property that occurs on a works as a result of a failure by

a water users' association to maintain the works in a safe working and operating condition.

(3) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of any property or facilities shall provide that, in the event of a failure or default in the payment of moneys specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations thereunder. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit any remedy provided by the contract or by law for the recovery of moneys due or which may become due under the contract.

(4) (a) A person aggrieved by a decision of the department to terminate any contract under subsection (3) may appeal to the board and be heard thereon by filing written notice of the appeal with the department within 10 days after receiving notice of termination of the contract from the department. The termination of the contract is stayed if an appeal is taken.

(b) If a dispute arises between the department and another party regarding amounts owing or the terms and conditions under a water marketing or water purchase contract or under a contract for the construction or repair of works, that party may appeal to the board for a hearing thereon and a resolution of the dispute by filing written notice of the appeal with the department within 30 days after the final decision of the department regarding the dispute.

(5) Subject to the approval of the board under 89-103.2, the department may sell, transfer to water user associations, abandon, or otherwise dispose of any rights-of-way, easements, or property when it determines that they are no longer needed for the purposes of this act or lease or rent the same or otherwise take and receive the income or profit and revenue therefrom. A determination shall be made by the department as to the market value of rights-of-way, easements, or property to be sold, transferred, abandoned, or otherwise disposed of.

History: En. Sec. 11, Ch. 35, Ex. L. 1933; amd. Sec. 1, Ch. 459, L. 1973; amd. Sec. 129, Ch. 253, L. 1974; amd. Sec. 3, Ch. 73, L. 1977; amd. Sec. 2, Ch. 460, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 73 and once by Ch. 460. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment inserted "of natural resources and conservation" after "board" at the beginning of the first paragraph; inserted the second paragraph; inserted "transfer to user associations, abandon" near the beginning of the fourth paragraph; inserted the second sentence in the fourth paragraph; and substituted "deposited to the state general fund" for "paid to the credit of the appropriate water fund" at the end of the fourth paragraph.

The 1974 amendment inserted the subsection designations; substituted "Subject to this act and section 89-103.2, the department may" for "The board of natural resources and conservation is hereby authorized and empowered, subject to the provisions of this act" at the beginning of subsection (1); substituted references to "department" for references to "board" throughout the section; inserted "or loans" after "bonds" in subsection (1); inserted subsection (4); substituted "Subject to the approval of the board under section 89-103.2, the department may" for "The board is empowered to" at the beginning

of subsection (5); and made minor changes in phraseology.

Chapter 73, Laws of 1977, deleted "or the state of Montana" before "for any injury" in the first sentence of subsection (2); added the second sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

Chapter 460, Laws of 1977, deleted the last sentence of subsection (5) which provided that all revenue from facilities acquired under this act be deposited to the state general fund; and made minor changes in phraseology, punctuation and style.

89-116.1. Disposition of moneys received from sale of water. The outstanding water conservation revenue bonds issued for seventeen (17) major irrigation projects and purchased by the state shall be administered by the department for the benefit of the state general fund. All sums received from the sale of water through water purchase contracts or otherwise from the seventeen (17) irrigation projects, except those funds which are specifically collected for the operation and maintenance of the projects, and all other income or other benefits arising from, out of, or in connection with the ownership of the projects from whatever source derived shall be deposited in the state general fund, to be applied on the retirement of the bonds and any advances or other indebtedness made for the benefit of the seventeen (17) projects by the department.

History: En. Sec. 1, Ch. 148, L. 1951; amd. Sec. 78, Ch. 147, L. 1963; amd. Sec. 130, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board" in two instances; and made minor changes in phraseology and punctuation.

89-117. (349.14) Contracts with the United States. The department may enter into contracts and leases with the United States, its instrumentalities or agencies, for the purpose of financing the construction of any works authorized by this act, and may in those contracts or leases authorize the United States, its instrumentalities or agencies, to supervise and approve the construction, maintenance and operation of the works, or any project or portion thereof, until such times as any money expended, advanced or loaned by said United States, its instrumentalities or agencies, and agreed to be repaid thereto by the department, is fully repaid. It is the purpose and intent of this act that the department may accept co-operation from the United States, its instrumentalities and agencies, in the construction, maintenance and operation and in financing the construction, of any works authorized by this act, and the department may do all things necessary in order to avail itself of that aid, assistance and co-operation under federal legislation now or hereafter enacted by Congress.

History: En. Sec. 13, Ch. 35, Ex. L. 1933; amd. Sec. 131, Ch. 253, L. 1974.

Amendments

The 1974 amendment deleted "Notwithstanding any provisions of this act to the contrary" at the beginning of the section; substituted "department" for "board" throughout the section; and made minor changes in phraseology.

89-118. (349.15) Powers and duties of department—actions at law. (1) The department shall keep full and complete accounts concerning all matters and things relating to the works and annually shall prepare balance sheets and income and profit and loss statements showing the financial condition of each project, and file copies thereof with the secretary of

state. All books and papers pertaining to all matters provided for in this act shall at all reasonable times be open to the inspection of any party interested or any citizen of the state. Except as otherwise provided in this act, the department has full charge and control of the construction, operation and maintenance of the works and the collection of all rates, charges and revenues of whatsoever character therefrom. The department shall proceed immediately with the construction of the works upon funds being made available therefor and shall prosecute the works to completion as rapidly as possible. The department, with the approval of the board, may sell, lease and otherwise dispose of all waters which may be impounded under this act, and the water may be sold for the purpose of irrigation, development of power, watering of stock or any other purpose. To the extent that it may be necessary to carry out this act, and subject to a compliance with the other provisions of this act, the department has full control of all the water of the state not under the exclusive control of the United States and not vested in private ownership, and it shall take such steps as may be necessary to appropriate and conserve the same for the use of the people.

(2) The department may institute in any court any actions, suits, and special proceedings necessary to enable it to acquire, own, and hold title to lands for dam sites, reservoir sites, water rights, rights of way for diversion and distributing canals, and lateral ditches, and other means of distribution of water, and may also in any court institute, maintain, and prosecute to final determination actions, suits and special proceedings necessary to have the water rights adjudicated upon any stream or source of water supply from which is derived the water for the reservoir, diversion and distributing canals, lateral ditches and other means of distribution of the water. The department may join owners of waters appropriated by a person, association or corporation from the streams of the state, so that adjudication may be had of all surplus water upon all the streams and sources of water supply of a project constructed by the department. All costs and expenses of the actions, suits or special proceedings shall be paid by the department out of funds provided under this act.

History: En. Sec. 14, Ch. 35, Ex. L. 1933; amd. Sec. 43, Ch. 177, L. 1965; amd. Sec. 132, Ch. 253, L. 1974.

Amendments

The 1965 amendment deleted from subsection (2) a second paragraph reading, "The vice-chairman of the board, who shall act as secretary and treasurer, shall furnish a bond in the form and to the amount that shall be required by said board."

The 1974 amendment substituted references to "department" for references to "board" throughout the section; inserted "with the approval of the board" near the beginning of the fifth sentence of subsection (1); and made minor changes in phraseology.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

89-119. (349.16) **Actions by trustee and bondholders.** Any holder of any bonds issued under this act or any of the coupons attached thereto, and the trustee, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may, either at law or in equity, by suit, action, mandamus or other proceeding, including proceedings for the appointment of

a receiver, protect and enforce any and all rights granted hereunder or under the resolution or trust indenture and may enforce and compel performance of all duties required by this act or by the resolution or trust indenture to be performed by the board or the department. While any bonds issued by the board remain outstanding the powers, duties or existence of the board or any official or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of the bonds.

History: En. Sec. 15, Ch. 35, Ex. L. 1933; amd. Sec. 133, Ch. 253, L. 1974.

Amendments

The 1974 amendment added "or the department" to the first sentence; and made minor changes in phraseology.

89-120. (349.17) **Limitation of liability—receipt of contributions and appropriations authorized.** (1) No liability or obligation shall be incurred under this act beyond the extent to which money is provided under this act. All public or private property damaged or destroyed in carrying out the powers granted under this act shall be restored or repaired and placed in their original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided by this act.

(2) The department may receive and accept appropriations and contributions from any source of either money or property or other things of value, to be held, used, and applied for the purposes in this act.

History: En. Sec. 16, Ch. 35, Ex. L. 1933; amd. Sec. 79, Ch. 147, L. 1963; amd. Sec. 134, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted the subsection designations; substituted "department" for "board" at the beginning of subsection (2); and made minor changes in phraseology.

89-121 to 89-123. (349.18 to 349.20) **Repealed.**

Repeal

Sections 89-121 to 89-123 (Secs. 17 to 19, Ch. 35, Ex. L. 1933; Sec. 1, Ch. 214, L. 1963), relating to appropriation of water by the board, were repealed by Sec. 46, Ch. 452, Laws 1973.

89-124. (349.21) **Conformity to federal regulations authorized.** For the purpose of obtaining financial aid from the United States of America, the department may adjust the plans and operation of a project, created under this act, to conform to the laws and regulations of the federal government and the supervision of any agency constituted under that authority, and may exercise those powers whenever conferred.

History: En. Sec. 20, Ch. 35, Ex. L. 1933; amd. Sec. 135, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board"; and made minor changes in phraseology.

89-125. (349.22) **Department powers over state waters.** (1) The authority of the department conferred by this chapter extends and applies to rights to the natural flow of the waters of this state which it may acquire, with the approval of the board, by condemnation, purchase, exchange, appropriation, or agreement.

(2) For the purpose of regulating the diversion of those waters, the department may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The department may take into consideration the decrees of the courts of this state having jurisdiction, which purport to adjudicate the waters of a stream or its tributaries, and a fair, reasonable, and equitable reconciliation shall be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by any court.

(4) The department, at its discretion, may hold hearings relating to the rights of respective claimants after first giving such notice as it considers appropriate and make findings of the date and quantity of appropriation and use of all claimants which the department will recognize and observe in diverting the waters which it owns. The department may police and distribute to the owner of the recognized appropriation the waters due him upon request and under terms agreed upon.

(5) The department, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this chapter, is exercising a police power of the state, and water commissioners appointed by any court may not deprive the department of any of the waters owned or administered under agreement with respective owners, but the owner of a prior right contending that the department is not recognizing and respecting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the department shall observe the terms of the final decree.

(6) When the department impounds or acquires the right of appropriation of the waters of a stream it may divert or authorize the diversion at any point on the stream or any portion thereof when it is done without injury to a prior appropriator.

(7) The department may acquire water by purchase option or agreement with the federal government from the Fort Peck Reservoir for the purpose of sale, rent, or distribution for industrial use. In such cases, the department is not required to construct any diversion or appropriation facilities or works, and it may sell, rent, or distribute such water at such rates and under such terms and conditions as it considers appropriate.

History: En. Sec. 21, Ch. 35, Ex. L. 1933; amd. Sec. 136, Ch. 253, L. 1974; amd. Sec. 1, Ch. 255, L. 1975; amd. Sec. 4, Ch. 460, L. 1977.

Amendments

The 1974 amendment inserted the subsection designations; substituted "department" for "board" throughout the section; inserted "with the approval of the board" after "acquire" in subsection (1); and made minor changes in phraseology.

The 1975 amendment added subsection (8).

The 1977 amendment deleted a former subsection (7) reading "This act does not repeal or amend an existing statute pertaining to the appropriation or use of water except as expressly provided in this act, and this act does not interfere with vested rights to the use of water"; redesignated former subsection (8) as subsection (7); deleted "In addition to the powers conferred on the department elsewhere in the chapter" at the beginning of subdivision (7); and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 255, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 7, 1975.

89-126. (349.23) **Repealed.**

Repeal

Section 89-126 (Sec. 5, Ch. 95, L. 1935), providing that the water conservation board was a body corporate and politic and an agency of the state, was repealed by Sec. 108, Ch. 253, Laws of 1974.

89-127. (349.24) **Sale or disposal of waters—disposal of waterworks systems, provision for.** In addition to the powers conferred upon the department to sell, lease, or otherwise dispose of waters for the purpose of irrigation, development of power, watering of stock, or other purposes, the department, with the approval of the board, may sell, lease, or otherwise dispose of waters from its waterworks systems for public, domestic, industrial and other uses and for fire protection. The department may sell or otherwise dispose of a waterworks system which is not operated for the purpose of irrigation or development of power, after the discharge of all of the bonds issued by the board to finance the construction or acquisition thereof and of all interest thereon and costs and expenses incurred in connection with any action or proceeding by or on behalf of the holders of the bonds; however, no such sale or other disposition may be made except to a municipality, political subdivision, authority or other public body of the state.

History: En. Sec. 6, Ch. 95, L. 1935; amd. Sec. 137, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted references to "department" for references to "board"; inserted "with the approval of the board" in the first sentence; and made minor changes in phraseology.

89-128. (349.25) **Repealed.**

Repeal

Section 89-128 (Sec. 22, Ch. 35, Ex. L. 1933), relating to liberal construction of the act, was repealed by Sec. 52, Ch. 460, Laws 1977.

89-129 to 89-132. (349.26 to 349.29) **Repealed.**

Repeal

Sections 89-129 to 89-132 (Secs. 1 to 4, Ch. 96, L. 1935), relating to rehabilitation of agricuture, trade and industry and relief of unemployment through public works programs and otherwise, were repealed by Sec. 108, Ch. 253, Laws of 1974.

89-132.1. State water plan. The department shall:

(1) Gather from any source reliable information relating to Montana's water resources, and prepare therefrom a continuing comprehensive inventory of the water resources of the state. In preparing this inventory, the department may conduct studies, adopt studies made by other competent water resource groups including federal, regional, state or private agencies, perform research or employ other competent agencies to perform research on a contract basis, and hold public hearings in affected areas at which all interested parties shall be given an opportunity to appear.

(2) Formulate and with the approval of the board, adopt, and from time to time amend, extend or add to, a comprehensive, co-ordinated multiple-use water resources plan, known as the "state water plan." The state water plan may be formulated and adopted in sections, these sections corresponding with hydrologic divisions of the state. The state water plan

shall set out a progressive program for the conservation, development and utilization of the state's water resources, propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before adoption of the state water plan, or any section thereof, the department shall hold public hearings in the state, or in an area of the state encompassed by a section thereof if adoption of a section is proposed. Notice of the hearing or hearings shall be published for two (2) consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section thereof at least thirty (30) days prior to the hearing.

(3) Submit to each general session of the legislature the state water plan or any section thereof or amendments, additions or revisions thereto which the department has formulated and adopted.

(4) Prepare a continuing inventory of the ground-water resources of the state. The ground-water inventory shall be included in the comprehensive water resources inventory described in subsection (1) above, but shall be a separate component thereof.

(5) Publish the comprehensive inventory, the state water plan, the ground-water inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

(6) The board may adopt rules necessary to effect the purposes of this act.

History: En. Sec. 5, Ch. 158, L. 1967; amd. Sec. 138, Ch. 253, L. 1974.

Amendments

The 1974 amendment rewrote the introductory clause which read: "In addition to any other power or duty authorized or imposed by provisions of this code, the board shall be empowered, and a duty is hereby enjoined thereon, to"; substituted "department" for "board" throughout the section; inserted "with the approval of the board" near the beginning of subdivision (2); inserted "The board" at the beginning of subdivision (6); and made minor changes in phraseology and punctuation.

89-133 to 89-139. (349.30 to 349.36) **Repealed.**

Repeal

Sections 89-133 to 89-139 (Secs. 5 to 10, Ch. 96, L. 1935; Sec. 1, Ch. 97, L. 1935), relating to utilization of state and local officers by the federal government, co-operation with the board by state officers, execution of instruments by the board, issuance of revenue bonds, supplemental nature of powers conferred by the act and the purpose and construction of the act, were repealed by Sec. 108, Ch. 253, Laws of 1974.

89-140. (349.37) **State agencies and counties may contract with department.** A state agency or the boards of county commissioners having jurisdiction over any lands which may require the use of any water or water rights owned or controlled by the department or the United States or its agencies, may enter into such contracts as are necessary with the department, the United States, or agencies of the United States, or others, for the purchase of water or water rights needed for those lands, and may enter into any contracts as necessary or expedient, similar to contracts executed by individuals or others, to secure for the state, state institutions, counties and state school and county lands the benefits of the water or water rights, which obligations may be similar to those of persons who

become stockholders in corporations or who may agree to purchase and pay for water for irrigation purposes. These contracts may include agreements that the state and counties shall be subject to the same charges and payments as are other water users within the projects; however, none of those charges, payments or costs shall constitute a lien against the state's interest in the lands.

History: En. Sec. 2, Ch. 97, L. 1935; amd. Sec. 139, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "A state agency or the" at the beginning of the section for "The state land board and/or the state board of examiners and/or the state board of education or any other board or agency of the state of Montana and/or"; substituted "department" for "state water conservation board" in two instances; and made minor changes in phraseology and punctuation.

89-142. **Department of natural resources and conservation authorized to negotiate with other states regarding interstate waters.** The department of natural resources and conservation may negotiate with the duly constituted authorities or agencies of other states and of the United States in the preparation of interstate compacts or agreements governing the use, distribution and allocation of the water of any stream or streams flowing from Montana into such other states or flowing from such other states into Montana. It shall co-operate with other states and with the United States in making the necessary studies and obtaining the data necessary to the preparation of the compacts. This authority and the duties hereby imposed are limited to the preparation and proposal of the compact and the compact or agreement is not binding upon the state of Montana until approved by the legislature of Montana and the legislatures of the other state or states involved in the compact.

History: En. Sec. 1, Ch. 27, Ex. L. 1933; amd. Sec. 2, Ch. 280, L. 1965; Sec. 81-2009, R. C. M. 1947; amd. and redes. 89-142 by Sec. 112, Ch. 253, L. 1974.

Amendments

The 1974 amendment redesignated the section; substituted "The department of natural resources and conservation may" at the beginning of the section for "The state water conservation board is hereby authorized and empowered to"; and made minor changes in phraseology.

CHAPTER 3—WEATHER MODIFICATION ACTIVITIES

Section 89-310. Definitions.
89-312. Acquisition of property—acceptance and expenditure of funds—research and development authority.
89-312.1. Standards for research in weather modification control.
89-313. License and permit required for weather modification and control.
89-314. Department to review applications—exemptions.
89-315. Issuance of license—qualifications of licensees.
89-316. Term of license—renewal.
89-317. License fee.
89-318. Issuance of permits—requirements for permit—hearing.
89-319. Separate permit for each operation.
89-320. Notice of intention to apply for permit—activities limited by terms of permit.
89-321. Contents of notice of intention.
89-322. Publication of notice of intention.
89-323. Proof of financial responsibility by applicant.
89-324. Permit fee—time of payment.
89-325. Earmarked revenue fund.
89-326. Records of operations maintained by licensees.
89-327. Reports of operations.

89-328. Records and reports open to public.
89-329. Termination of licenses and permits by board.
89-330. State and agents not liable for acts of private persons.
89-331. Violation as misdemeanor—continuing violations.

89-301 to 89-309. (349.54 to 349.62) Repealed.

Repeal

These sections (Secs. 1 to 9, Ch. 176, L. 1935), relating to development of state resources by the state planning board, were repealed by Sec. 10, Ch. 19, Laws 1967.

89-310. Definitions. Unless the context requires otherwise, in this chapter:

(1) "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods, the natural development of atmospheric cloud forms or precipitation forms which occur in the troposphere.

(2) "Research and development" means theoretical analysis, exploration and experimentation, and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(3) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(4) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

History: En. Sec. 1, Ch. 20, L. 1967; amd. Sec. 1, Ch. 368, L. 1973; amd. Sec. 140, Ch. 253, L. 1974.

Title of Act

An act to control weather modification activities and designating the state water conservation board as the agency to administer this act.

Amendments

The 1973 amendment divided the former language into the preliminary clause and subdivision (1); and added subdivisions (2) and (3).

The 1974 amendment added subdivision (4); and made minor changes in punctuation and phraseology.

89-311. Repealed.

Repeal

Section 89-311 (Sec. 2, Ch. 20, L. 1967), relating to responsibility of water resources board for administration of act and to reimbursement of board members for expenses, was repealed by Sec. 108, Ch. 253, L. 1974.

89-312. Acquisition of property—acceptance and expenditure of funds—research and development authority. In addition to any other acts authorized by law the department may:

(1) acquire materials, equipment and facilities as are necessary to perform its duties under this act;

(2) receive any funds which may be offered or become available from federal grants or appropriations, private gifts, donations, bequests, or any other source and unless their use is restricted, may expend the funds for the administration of this act;

(3) make such studies and investigations, and obtain such information as the department may deem necessary in exercising its authority in the administration or enforcement of this act;

(4) co-operate with public or private agencies in the performance of the department's functions or duties and in furtherance of the purposes of this act;

(5) represent the state in any and all matters pertaining to plans, procedures or negotiations for interstate compacts relating to weather modification and control;

(6) enter into co-operative agreements with the United States government or any of its agencies, or with the various counties and cities of this state or with any private or public agencies for conducting weather modification or cloud seeding operations;

(7) act for and represent the state and the counties, cities and private or public agencies in contracting with private concerns for the performance of weather modifications or cloud seeding operations; and

(8) conduct and may make arrangements including contracts and agreements for the conduct of, research and development activities relating to:

(a) the identification and evaluation of meteorological, environmental, ecological, agricultural, economic, hydrological and sociological impacts of weather modification in Montana;

(b) the theory and development of methods of weather modification and control, including processes, materials and devices relating thereto;

(c) the utilization of weather modification and control for agricultural, industrial, commercial, recreational and other purposes;

(d) the protection of life and property during research and operational activities.

History: En. Sec. 3, Ch. 20, L. 1967; amd. Sec. 2, Ch. 368, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in the preliminary clause; deleted subdivision (1), which authorized the establishment of advisory committees; renumbered subdivisions (2) and (3) as (1) and (2); and added subdivisions (3) through (8).

89-312.1. Standards for research in weather modification control. The board may establish by rule standards and instructions to govern the carrying out of research and development or projects in weather modification and control as it deems necessary or desirable to minimize danger to health, safety, welfare or property.

History: En. Sec. 3, Ch. 368, L. 1973; amd. Sec. 141, Ch. 253, L. 1974.

Title of Act

An act amending sections 89-310, 89-312, 89-314 and 89-318, R. C. M. 1947; adding new provisions broadening the scope of weather modification by authorizing more extensive research and development of weather modification.

Amendments

The 1974 amendment substituted "board" for "department."

89-313. License and permit required for weather modification and control. No person shall engage in activities for weather modification and

control except under, and in accordance with, a license and a permit issued by the board authorizing such activities.

History: En. Sec. 4, Ch. 20, L. 1967.

89-314. Department to review applications—exemptions. The department shall review all applications for weather modification activities, and the board may provide by rule for exempting from the license and permit requirements of this act:

(1) research, development, and experiments by state and federal agencies, institutions of higher learning and bona fide nonprofit research organizations and their agents;

(2) laboratory research and experiments;

(3) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(4) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail.

History: En. Sec. 5, Ch. 20, L. 1967; amd. Sec. 4, Ch. 368, L. 1973; amd. Sec. 142, Ch. 253, L. 1974.

Amendments

The 1973 amendment substituted "requirements of this act" for "fees" at the end of the preliminary clause; and made minor changes in style.

The 1974 amendment substituted "department" for "board" at the beginning of the section; inserted "the board" in the introductory paragraph; and made minor changes in phraseology and punctuation.

89-315. Issuance of license—qualifications of licensees. The license to engage in activities for weather modification and control shall be issued, in accordance with procedures and subject to conditions the board may by rule establish to effectuate the provisions of this act, to applicants who demonstrate competence in the field of meteorology to the satisfaction of the board. If the applicant is an organization, these requirements must be met by the individual who will be in charge of the operation for the applicant.

History: En. Sec. 6, Ch. 20, L. 1967.

89-316. Term of license—renewal. The license shall be issued for a period to expire at the end of the calendar year in which it is issued and, if the licensee possesses the qualifications necessary for the issuance of a new license, shall upon application be renewed at the expiration of the period.

History: En. Sec. 7, Ch. 20, L. 1967.

89-317. License fee. A license shall be issued or renewed only upon the payment to the department of one hundred dollars ($100) for the license or renewal.

History: En. Sec. 8, Ch. 20, L. 1967; amd. Sec. 143, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board."

89-318. Issuance of permits—requirements for permit—hearing. (1) The permits shall be issued in accordance with procedures and subject to conditions the board may by rule establish to effectuate this chapter, only:

(a) if the applicant is licensed pursuant to this chapter;

(b) if sufficient notice of intention is published;

(c) if an applicant furnishes proof of financial responsibility in an amount to be determined by the board as required in 89-323;

(d) if the fee for the permit is paid as required in 89-324;

(e) if the weather modification and control activities to be conducted are determined by the board to be for the general welfare and the public good.

(2) The department shall hold a public hearing in the area to be affected by the issuance of the permit, if the board determines that a hearing is necessary. The department may in its discretion assess the permit applicant for the costs incurred by the department in holding the hearing.

History: En. Sec. 9, Ch. 20, L. 1967; amd. Sec. 1, Ch. 214, L. 1973; amd. Sec. 5, Ch. 368, L. 1973; amd. Sec. 144, Ch. 253, L. 1974; amd. Sec. 1, Ch. 46, L. 1977.

Amendments

Chapter 214, Laws of 1973, designated the language in the former section as subsection (1); substituted letter designations (a) to (e) in subsection (1) for numeral designations (1) to (5); inserted "of natural resources and conservation" after "board" in the preliminary paragraph of subsection (1); substituted a new subsection (2) for a subdivision (6) reading "if the board has held an open hearing in the area to be affected as to such issuance"; and made minor changes in style. As enacted by Ch. 214, the first sentence of subsection (2) read: "The department of natural resources and conservation shall hold a public hearing in the area to be affected by the issuance of the permit, if the board determines that a hearing is necessary."

Chapter 368, Laws of 1973, substituted the first sentence of subsection (2) for the former subdivision (6) quoted above.

The 1974 amendment substituted "this chapter" for "this act" in subsection (1) and subdivision (1)(a); deleted "of this act" at the end of subdivisions (1)(b), (1)(c) and (1)(d); substituted "The department shall hold a public hearing" for "A public hearing may be held" and substituted "board" for "department" in the first sentence of subsection (2); inserted "in its discretion" in the second sentence of subsection (2); and made minor changes in phraseology and punctuation.

The 1977 amendment deleted "and proof of publication is filed as required in section 89-322" from the end of subdivision (1)(b); and made minor changes in style.

Effective Date

Section 2 of Ch. 214, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

89-319. Separate permit for each operation. (1) Separate permits shall be issued for each operation.

(2) "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval not exceeding 1 year.

History: En. Sec. 10, Ch. 20, L. 1967; amd. Sec. 5, Ch. 460, L. 1977.

Amendments

The 1977 amendment inserted subsection (1); and made minor changes in punctuation and style.

89-320. Notice of intention to apply for permit—activities limited by terms of permit. Before undertaking any weather modification and control activities, the applicant for a permit shall file with the department a notice of intention. If a permit is issued, the holder of the permit shall confine his activities to the time and area limits set forth in the notice of intention, unless modified by the board. His activities shall conform to

any conditions imposed by the board. The permit may not be sold or transferred.

History: En. Sec. 11, Ch. 20, L. 1967; amd. Sec. 145, Ch. 253, L. 1974; amd. Sec. 2, Ch. 46, L. 1977.

Amendments

The 1974 amendment substituted "department" for "board"; and made a minor change in phraseology.

The 1977 amendment deleted "and also have published" before "a notice of intention" near the end of the first sentence.

89-321. Contents of notice of intention. The notice of intention shall set forth at least the following:

(1) the name and address of the applicant;

(2) the nature, purpose, and objective of the intended operation and the person or organization on whose behalf it is to be conducted;

(3) the area in which, and the approximate time during which, the operation will be conducted;

(4) the area which is intended to be affected by the operation;

(5) the materials and methods to be used in conducting the operation.

History: En. Sec. 12, Ch. 20, L. 1967.

89-322. Publication of notice of intention. (1) The department shall have the notice of intention, or that portion thereof including the items specified in 89-321, published at least once a week for 2 consecutive weeks in a newspaper having a general circulation and published within any county in which the operation is to be conducted and in which the affected area is located, or, if the operation is to be conducted in more than one county or if the affected area is located in more than one county or is located in a county other than the one in which the operation is to be conducted, then in newspapers having a general circulation and published within each of the counties.

(2) The applicant shall reimburse the department for the costs of publication of the notice of intention.

History: En. Sec. 12, Ch. 20, L. 1967; amd. Sec. 146, Ch. 253, L. 1974; amd. Sec. 3, Ch. 46, L. 1977.

Amendments

The 1974 amendment substituted "section 89-321" for "section 12 of this act" in subsection (1); and substituted "department" for "board" in subsection (2).

The 1977 amendment substituted "department" for "applicant" at the beginning of subsection (1); substituted subsection (2) for a subsection reading "Proof of publication, made in the manner provided by law, shall be filed by the applicant with the department sooner than the sixteenth day after the date of the last publication of the notice"; and made minor changes in phraseology and style.

Effective Date

Section 4 of Ch. 46, Laws 1977 provided the act should be effective on its passage and approval. Approved March 18, 1977.

89-323. Proof of financial responsibility by applicant. Proof of financial responsibility may be furnished by an applicant by his showing, to the satisfaction of the board, ability to respond in damages for liability which might reasonably be attached to, or result from, his weather modification and control activities.

History: En. Sec. 14, Ch. 20, L. 1967.

89-324. Permit fee—time of payment. The fee to be paid by each applicant for a permit shall be equivalent to one per cent (1%) of the estimated cost of such operation, the estimated cost to be computed by the department from the evidence available to it. The fee is due and payable to the department as of the date of issuance of the permit by the board; however, if the applicant is able to give satisfactory security for the payment of the balance he may be permitted to commence the operation, and a permit may be issued therefor, upon the payment of not less than fifty per cent (50%) of the fee. The balance due shall be paid within three (3) months from the date of termination of the operation as prescribed in the permit.

History: En. Sec. 15, Ch. 20, L. 1967; amd. Sec. 1, Ch. 151, L. 1969; amd. Sec. 147, Ch. 253, L. 1974.

Amendments

The 1969 amendment substituted "one per cent (1%)" for "one and one-half per cent (1½%)" in the first sentence.

The 1974 amendment substituted "department" for "board" in the first two sentences; and inserted "by the board" after "issuance of the permit" in the second sentence.

89-325. Earmarked revenue fund. All license and permit fees and fines collected under this chapter shall be deposited in the earmarked revenue fund for use by the department in the administration of this chapter.

History: En. Sec. 16, Ch. 20, L. 1967; amd. Sec. 1, Ch. 151, L. 1969; amd. Sec. 147, Ch. 253, L. 1974; amd. Sec. 1, Ch. 147, L. 1975.

Amendments

The 1974 amendment changed the name of the account from "weather modification board account" to "weather modification account"; and substituted "department" for "board."

The 1975 amendment rewrote this section which read: "There is established an account in the agency fund to be known as the 'weather modification account.' All license and permit fees paid to the department shall be deposited in this account and used to pay the expenses of administering this act."

89-326. Records of operations maintained by licensees. Every licensee shall keep and maintain a record of all operations conducted by him under his license and each permit, showing:

(1) The method employed;

(2) Type of equipment used;

(3) Kinds and amounts of material used;

(4) Times and places of operation of the equipment;

(5) Names and addresses of all individuals participating or assisting in the operation;

(6) Any other general information as the department may require.

History: En. Sec. 17, Ch. 20, L. 1967; amd. Sec. 149, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board" in subdivision (6); and made minor changes in style.

89-327. Reports of operations. The department shall require written reports, in a manner as it provides, of each operation for which a permit is

issued. The department shall also require reports from any organization that is exempt from license and permit requirements as provided in section 89-314.

History: En. Sec. 18, Ch. 20, L. 1967; amd. Sec. 150, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board" at the beginning of each sentence; and substituted "section 89-314" for "section 5 of this act."

89-328. Records and reports open to public. The records and reports in the custody of the department shall be open for public examination.

History: En. Sec. 19, Ch. 20, L. 1967; amd. Sec. 151, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board."

89-329. Termination of licenses and permits by board. After notice to the licensee and a reasonable opportunity for a hearing, the board may modify, suspend, revoke, or refuse to renew, any license or permit issued if it appears that the licensee no longer possesses the qualifications necessary or if it appears that the licensee has violated any of the provisions of this act; or in the case of a modification, that it is necessary for the protection of the health or the property of any person.

History: En. Sec. 20, Ch. 20, L. 1967.

89-330. State and agents not liable for acts of private persons. Nothing in this act shall be construed to impose or accept any liability or responsibility on the part of the state, the board, the department or any state officials or employees for any weather modification and control activities of any private person or group.

History: En. Sec. 21, Ch. 20, L. 1967; amd. Sec. 152, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted "the department."

89-331. Violation as misdemeanor—continuing violations. A person violating any provision of this act is guilty of a misdemeanor, and a continuing violation is punishable as a separate offense for each day during which it occurs.

History: En. Sec. 22, Ch. 20, L. 1967.

Separability Clause

Section 23 of Ch. 20, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 4—WATER CONSERVATION MONEYS

Section 89-401. Disposition of moneys collected.
89-402. Payment of expenses.

89-401. (349.63) Disposition of moneys collected. (1) For the purpose of carrying out the provisions of chapter 1 of Title 89 and such other water resource authority, powers, and duties as are conferred upon the department of natural resources and conservation by law, the fol-

lowing moneys shall be deposited in the earmarked revenue fund for the use of the department:

(a) all sums of money donated or contributed by the federal government or any department or agencies thereof;

(b) all gifts, donations, bequests, and devises made to the state therefor and proceeds of the sale thereof; and the proceeds of the sale or redemption of and the interest earned by the securities purchased or acquired with money received under this subsection;

(c) all reimbursements for money advanced for the payment of the assessments upon state, school-granted, and other public lands for the improvement thereof as provided by law;

(d) all reimbursements for money advanced for the investigation and survey of reclamation, electrification, and rehabilitation systems or projects proposed to be financed in whole or in part by the reclamation of lands and dyking, drainage, and dyking and drainage dams for conservation of water to be used in reclamation of land or stock reservoirs or for the construction, maintenance, and operation of plants or projects for the manufacture or distribution of electric current;

(e) all reimbursements for costs of surveys and investigations for moneys advanced to counties, cities or towns or their proportion of the cost thereof or from any other sources.

(2) The following shall be deposited in the state general fund:

(a) all income or profit and revenue of the works and all money received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of the works, property, and facilities acquired under chapter 1 of Title 89; and

(b) all sums received by the department for the use of electricity in excess of the maintenance and operation of the electrification system or project.

History: En. Sec. 1, Ch. 169, L. 1935; amd. Sec. 241, Ch. 147, L. 1963; amd. Sec. 153, Ch. 253, L. 1974; amd. Sec. 3, Ch. 460, L. 1977.

Amendments

The 1974 amendment inserted "water resource" before "authority, powers and duties" near the beginning of the section; substituted references to "department of natural resources and conservation" for references to "water conservation board"; and made minor changes in phraseology.

The 1977 amendment inserted the subsection designations; substituted subsection (2) for "revenues arising from projects constructed or owned by the department in excess of costs of operation and maintenance, and repayment of principal and interest of any moneys borrowed for the construction of the projects; all sums payable as rentals due for water use, maintenance or operation upon any project owned by the state or for which such rentals are due and payable under any contract or agreement made by any person, association or corporation with the department; all sums of money received by the department for the use of electric current, in excess of the maintenance and operation upon any electrification system or project"; and made minor changes in phraseology, punctuation and style.

89-402. (349.64) **Payment of expenses.** From the moneys of the department in the earmarked revenue fund there shall be paid, upon vouchers approved by it, such sums as are found to be necessary or expedient for the investigation and survey of unreclaimed and undeveloped

lands, to determine the relative agricultural value, productiveness, uses and feasibility and cost of the reclamation and development thereof; for the investigation and survey of electrification and rehabilitation systems and projects proposed to be financed in whole or in part by the department; such amounts as may be authorized by the department for the reclamation of lands by dyking, drainage, dyking and drainage and irrigation districts duly and regularly organized under the laws of this state and such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands; such amounts as may be authorized by the department for the construction, maintenance and operation of dams and dykes for the conservation of water for reclamation projects or stock reservoirs, and purchase of rights of way and other costs preliminary to construction of reclamation, stock reservoirs, electrification or rehabilitation systems or projects authorized under the Water Conservation Act or acts amendatory thereof or supplemental thereto, provided that whenever deemed practical the department may employ county surveyors in the assistance and preparation of surveys and investigations conducted by the department.

History: En. Sec. 2, Ch. 169, L. 1935; amd. Sec. 80, Ch. 147, L. 1963; amd. Sec. 154, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted references to "department" for references to "board"; and substituted "vouchers approved by it" near the beginning of the section for "vouchers approved by the board, attested by the secretary."

CHAPTER 6—PUBLIC DOCKS AND WHARVES

89-605. (1609) **Jurisdiction of public service commission.**

Compiler's Notes

Section 21, Ch. 315, Laws 1974, substituted "public service commission" in this section for "railroad commission."

CHAPTER 7—DAMS AND RESERVOIRS—CONSTRUCTION AND EXAMINATION OF

Section 89-702. Dams, dikes, and reservoirs to be constructed in a secure manner—proceedings upon complaint of insecurity.
89-702.1. Jurisdiction of department.
89-702.2. Federal structures exempt from act.
89-714. Penalties.

89-702. (2659) **Dams, dikes, and reservoirs to be constructed in a secure manner—proceedings upon complaint of insecurity.** (1) A person, association, or corporation may not construct, or cause to be constructed, a dam, dike, or reservoir for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner.

(2) The department of natural resources and conservation may at any time on its own motion, and it shall, upon complaint on oath being made to the department by three (3) or more persons residing or having property in such location, that their homes or property would be in danger of destruction or damage in event of flood occurring on account of the breaking of any dam, dike, or reservoir within the state, and that they

have reason to believe said dam, dike or reservoir is in an unsafe condition, or that it is diverting or is being filled with water to such an extent as to render it unsafe, immediately examine, or cause to be examined, the dam, dike or reservoir. If, upon the examination, the department finds that the dam, dike or reservoir is unsafe, or is diverting or is being filled with water to such an extent as to render it unsafe, it shall notify the county attorney of the county in which the dam, dike or reservoir is located, setting forth its findings, and the county attorney shall immediately take the necessary steps to abate the danger and make the structure safe.

(3) If either party is dissatisfied with the findings of the department, it may appeal to the district court of the district wherein the dam, dike or reservoir is located, and the court shall hear and determine the matter at the earliest practical time, subject to the right of either party to appeal as in other civil cases; however, the judgment of the department shall control until the final determination of the case.

History: Sec. 2139, Rev. C. 1907; amd. Sec. 1, Ch. 168, L. 1917; re-en. Sec. 2659, R. C. M. 1921; amd. Sec. 5, Ch. 280, L. 1965; amd. Sec. 1, Ch. 370, L. 1971; amd. Sec. 1, Ch. 209, L. 1973; amd. Sec. 1, Ch. 335, L. 1975.

Amendments

The 1965 amendment substituted "state water conservation board" for "state engineer" in five places; and made minor changes in phraseology.

The 1971 amendment inserted "The Montana water resources board, at any time, on its own motion or" in the beginning of the second paragraph; and substituted "state water resources board" for "state water conservation board" in five places.

The 1973 amendment divided the former section into three subsections; substituted references to the department of natural resources and conservation for references to the water resources board in subsection (2); inserted "may" following "department of natural resources and conservation"; inserted "and it shall" before "upon complaint" near the beginning of subsection (2); and made minor changes in style and phraseology.

The 1975 amendment inserted "reservoir" in subsection (1); substituted the first reference to "dam, dike, or reservoir" in subsection (2) for "dam or dike of any reservoir"; inserted "dam, dike or" before "reservoir" throughout the rest of subsection (2) and in subsection (3); inserted "diverting or is" before "being filled with water" twice in subsection (2); and made minor changes in punctuation.

89-702.1. Jurisdiction of department. Jurisdiction of the department under section 89-702 applies to any dam, dike, or reservoir which does or will impound or divert water, and which:

(1) has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre-feet or more; or,

(2) is twenty-five (25) feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the dam or dike, or from the lowest elevation of the outside limit of the dam or dike, if it is not across a stream channel or watercourse, to the maximum storage elevation.

History: En. Sec. 2, Ch. 370, L. 1971; amd. Sec. 2, Ch. 209, L. 1973; amd. Sec. 2, Ch. 335, L. 1975.

Title of Act

An act to allow the Montana water resources board, upon its own motion, to inspect and determine safety of dams or dikes; amending section 89-702, R. C. M., 1947.

Amendments

The 1973 amendment substituted "department under section 89-702" for "water resources board"; divided the former section into the preliminary clause and the

present subdivision (1); inserted "maximum" in subdivision (1); reduced the capacity specified in subdivision (1) from 100 to 50 acre-feet; and added subdivision (2).

The 1975 amendment inserted "or reservoir" in the preliminary clause; and made a minor change in phraseology.

89-702.2. Federal structures exempt from act. The provisions of this act shall not apply to dams, dikes, and reservoirs which are subject to federal power commission inspections under federal laws.

History: En. 89-702.2 by Sec. 3, Ch. 335, L. 1975.

Title of Act

An act amending sections 89-702 and 89-702.1, R. C. M. 1947, to clearly provide that all dams, dikes, and reservoirs are included in said sections.

89-714. (2671) Penalties. Any person violating any of the provisions of this chapter is punishable as provided in 94-35-105, and if death ensues by reason of any of the acts prohibited by this chapter, the person guilty of the same may be convicted of homicide.

History: En. Sec. 2151, Rev. C. 1907; re-en. Sec. 2671, R. C. M. 1921; amd. Sec. 64, Ch. 359, L. 1977.

Compiler's Notes

Section 94-35-105, referred to in this section, was repealed by Sec. 32, Ch. 513, Laws of 1973.

Amendments

The 1977 amendment substituted "homicide" at the end of the section for "murder, manslaughter, or any other felony, as the case may be"; and made minor changes in phraseology and style.

CHAPTER 8—WATER RIGHTS—APPROPRIATION AND ADJUDICATION

Section 89-806. Diversion of natural flow of waters, when permitted.
89-823. Owners of water to sell surplus.
89-865. Short title.
89-866. Declaration of policy and purpose.
89-867. Definitions.
89-868. Powers and duties of department.
89-869. Powers and duties of board.
89-870. Determination of existing rights.
89-871. Data for determination of existing rights.
89-872. Declarations of existing rights.
89-873. Filing of petition.
89-874. Contents of petition.
89-875. Preliminary decree.
89-876. Hearing on preliminary decree.
89-877. Final decree.
89-878. Appeals from final decree.
89-879. Certificate of water right.
89-880. Right to appropriate—application for permit.
89-881. Notice of application.
89-882. Objections.
89-883. Hearings on objections.
89-884. Action on application.
89-885. Criteria for issuance of permit.
89-886. Terms of permit.
89-887. Revocation of permit.
89-888. Certificate of water right.
89-889. Reservoirs.
89-890. Reservation of waters.
89-891. Priority.
89-891.1. Water turned into natural channels.
89-892. Changes in appropriation rights.
89-893. Transfer of appropriation right.

89-894. Abandonment of appropriation right.
89-895. Procedure for declaring appropriation rights abandoned.
89-896. Supervision of water distribution.
89-897. Prevention of waste.
89-898. Entry on land—inspections.
89-899. Legal assistance.
89-8-100. Administrative proceedings.
89-8-100.1. Recovery of attorney fees by prevailing party.
89-8-101. Penalties.
89-8-102. Deposit of fees and penalties.
89-8-102.1. Saving clause.
89-8-102.2. Fees for environmental impact statements.
89-8-103. Statement of legislative findings and policy.
89-8-104. Definitions.
89-8-105. Suspension of action.
89-8-106. When department may suspend action.
89-8-107. Reservations.
89-8-108. Application of act.
89-8-109. Utility facilities.
89-8-110. Certain changes of use allowed.
89-8-111. Severability.

89-801 to 89-801.2, 89-802 to 89-804. (7093 to 7096) Repealed.

Repeal

Sections 89-801 to 89-801.2, 89-802 to 89-804 (Secs. 1 to 4, pp. 130, 131, L. 1885; Sec. 1, p. 152, L. 1901; Secs. 1, 2, Ch. 228, L. 1921; Secs. 1 to 3, Ch. 345, L. 1969), relating to right to appropriate water, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-880, 89-891 and 89-892.

Compiler's Notes

The Montana Water Use Act preserves "existing rights" and future determinations and adjudications will require reference to sections repealed by the 1973 law. The text of repealed sections 89-121 to 89-123, 89-802 to 89-804, 89-807 to 89-812, 89-814 to 89-816, 89-829 to 89-842, 89-844, 89-845, 89-850, 89-852 to 89-855, 89-857 to 89-864, 89-2912, 89-2913 (a) to (g), 89-2919 to 89-2925, and 89-2935 may be found in bound Volume 6, Part 1. The text of repealed sections 89-801 to 89-801.2, 89-813, 89-847 to 89-849, 89-851, and 89-2913 (h) is as follows:

89-801. What waters may be appropriated. (1) The right to the use of the unappropriated water of any river, stream, ravine, coulee, spring, lake, or other natural source of supply may be acquired by appropriation, and an appropriator may impound flood, seepage, and waste waters in a reservoir and thereby appropriate the same.

(2) But the unappropriated waters of the streams and portions of streams hereafter named shall be subject to appropriation by the fish and game commission of the state of Montana in such amounts only as may be necessary to maintain stream flows necessary for the preservation of fish and wildlife habitat. Such uses shall have a priority of right over other uses until the district court in which lies the major portions of such stream or streams shall determine that such waters are needed for a use determined by said court to be more beneficial to the public. The unappropriated water of other streams and rivers not named herein may be set aside in the future for appropriation by the fish and game commission upon consideration and recommendation of the water resources board, fish and game commission, state soil conservation committee, the state board of health and approval of the legislature.

(a) Big Spring creek in Fergus county from its mouth in T17N, R16E, Sec. 26 to the state fish hatchery in T14W, R19E, Sec. 5.

(b) Blackfoot river in Missoula and Powell counties from its mouth in T13N, R18W, Sec. 21 to the mouth of its North Fork in T14N, R12W, Sec. 9.

(c) Flathead river in Flathead county from its mouth in T27N, R20W, Sec. 34 to the Canadian border in T37N, R22W, Sec. 4 & 5, including the section commonly known as the North Fork of the Flathead river.

(d) Gallatin river in Gallatin county from its mouth in T2N, R2E, Sec. 9 to the junction of its East Fork in T2N, R3E, Sec. 27.

(e) Gallatin river in Gallatin county (commonly called the West Gallatin) from the Beck & Border ditch intake in T2S, R4E, Sec. 14 to where it leaves the Yellowstone Park boundary in T9S, R5E, Sec. 18.

(f) Madison river in Madison and Gallatin counties from its mouth in T2N,

R2E, Sec. 17 to Hebgen dam in T11S, R3E, Sec. 23.

(g) Missouri river in Lewis and Clark, Broadwater and Cascade counties from its junction with the Smith river in T19N, R2E, Sec. 9 to Toston dam in T4N, R3E, Sec. 7.

(h) Rock creek in Granite and Missoula counties from its mouth in T11N, R17W, Sec. 12 to the junction of its East and West Forks in T6N, R15W, Sec. 31.

(i) Smith river in Cascade and Meagher counties from the mouth of Hound creek in T17N, R3E, Sec. 20 to the Fort Logan bridge in T11N, R5E, Sec. 31.

(j) Yellowstone river in Stillwater, Sweetgrass and Park counties from the North-South Carbon-Stillwater county lines in T3S, R21E, Sec. 10 to where it leaves the Yellowstone Park boundary in NT9S, R8E, Sec. 23.

(k) Middle Fork Flathead river in Flathead county from its mouth in T31N, R19W, Sec. 7 to the mouth of Cox creek in T27N, R12W, (a nonsectioned township).

(l) South Fork Flathead river in Flathead and Powell counties from its mouth at Hungry Horse reservoir in T26W, R16W, Sec. (unknown), to its source at the junction of Danaher and Youngs creeks in T20W, R13W, Sec. 36.

89-801.1. Established rights of use unaffected. Nothing herein contained shall in any way affect or diminish any rights to the use of the waters of such streams or portions of streams heretofore established nor any legal or statutory rights given in connection with such established uses.

89-801.2. Notice of appropriation. The appropriation hereby authorized shall be made by filing a written notice of appropriation in the office of the county clerk and recorder of each county through which flows the river on which the appropriation is made, and by filing a copy of such notice with the director of the Montana water resources board. The notice shall state the quantity of water claimed, measured as provided in Title 89, R. C. M. 1947, the purpose for which it is claimed, the name of the appropriator, and the date of appropriation.

89-813. Record of declaration. Persons who have heretofore acquired rights to the use of water shall, within six (6) months after the publication of this chapter, file in the office of the county clerk of the county in which the water right is situated, a declaration in writing, except notice be already given of record as required by this chapter, or a declaration in writing be already filed as required by this section, containing the same facts as required in the notice provided for record in section 89-810 of this chapter, and verified as required in said last-mentioned section, in cases of notice of appropriation of water; provided, that a failure to comply with the requirements of this section shall in nowise work a forfeiture of such heretofore acquired rights, or prevent any such claimant from establishing such rights in the courts. From and after July 1, 1967, the county clerk and recorder shall forward to the water resources board a copy of any instrument of water appropriation or instrument transferring any water appropriation which is filed as provided in this section.

89-847. Declaration of policy as to adjudication of waters of the state. It is hereby declared to be the policy of this state and necessary for the welfare of the state and its citizens, that the waters of this state and especially interstate streams arising out of the state be investigated and adjudicated as soon as possible in order to protect the rights of water users in this state and negotiate interstate compacts in relation thereto, and that the state water conservation board make investigations to secure necessary information and initiate and carry on actions therefor.

89-848. Montana water resources board may bring action to adjudicate waters. The state water conservation board is hereby authorized to bring action to adjudicate the waters of any stream or of any stream and its tributaries in any county traversed by said stream.

89-849. Appointment of referee to take testimony. In said actions the state water conservation board, or in any action pending for the adjudication of a water right, any party thereto, may make application to the court for the appointment of some competent person or persons to act as a referee or referees in said cause and to take testimony therein, and the court may appoint a referee or referees who shall proceed as herein set forth. In said order of reference the court may submit to said referee or referees any or all issues of fact in said cause.

89-851. Duties of Montana water resources board—scope of examination of streams—surveys, reports, maps and plats may be introduced as evidence. The state water conservation board shall either before or after the bringing of such action do all things, make all surveys, and perform all services required by said board in the securing of all necessary information and making same available

to persons who may be interested therein including the courts of this state. The state water conservation board or some qualified employee may proceed to make an examination of any stream or streams as required by said board and the works diverting therefrom, said examination to include the measurement of the discharge of said stream and of the carrying capacity of the various ditches and canals, and examination of the irrigated lands and an approximate measurement of the lands irrigated from the various ditches and canals, and to take such other steps and gather such other data and information as may be essential to the proper understanding of the relative rights of the parties interested, which said observation and measurement shall be reduced to writing and made a matter of record, and it shall be the duty of the state water conservation board to make or cause to be made such maps or plats thereof as deemed necessary or shall be required. Any or all such surveys, reports, maps and plats may be furnished to the judge of said court or the referee or referees mentioned herein and may be introduced as evidence in such proceedings; provided that the costs and expenses incurred in carrying out the provisions of this section shall be paid by the state water conservation board.

89-2913. Filing — notice of appropriation — notice of completion.

(h) Persons who had put ground water to a beneficial use, including subirrigation or other natural process, prior to January 1, 1962 had a four (4) year period after January 1, 1962 to file a "declaration of vested ground water rights" in the office of the county clerk of the county in which the claimed right was situated. The right to file a "declaration of vested ground water rights" expired on January 1, 1966; therefore, any person desiring to file on ground water put to beneficial use prior to January 1, 1962, but not filed on by December 31, 1965 may file a "notice of completion." The appropriators right will commence on the date the notice is filed, except as hereinafter provided.

The county clerk shall transmit copies to the office of the administrator and the bureau of mines and geology. The administrator shall attend to filing copies in any other counties affected by the appropriation.

The "declaration of vested ground water rights" as provided for, to be filed on from January 1, 1962 to January 1, 1966 shall be taken and received in all courts of this state as prima facie evidence of the statements therein contained.

Failure to comply with this requirement shall in nowise work a forfeiture of such rights, or prevent any such claimant from establishing such rights in the courts, but he must maintain the burden of proving such unrecorded rights. Provided, however, that persons who have filed the water well log form, provided for in sections 1 and 2 of chapter 58, session laws of Montana, 1957, shall be deemed to have complied with the requirements of this section. These latter forms may be returned to the county clerks by the administrator for the purpose of correction or for the entry of material facts necessary to fully complete the filing.

89-806. Diversion of natural flow of waters, when permitted. Any person, persons, association or corporation, owning or in possession of lands susceptible of irrigation from any stream, the waters of which are so diminished by prior appropriations that a sufficient amount of water for the irrigation of their lands cannot be obtained from the natural flow of the stream, who shall construct a reservoir, or shall purchase or lease water from a reservoir owned by the department of natural resources and conservation, or another, or shall otherwise acquire an interest in such reservoir, or in water stored therein, which is so located that because of natural or other obstacles the water impounded therein cannot be conducted to the lands which they desire to irrigate, may, provided the stored water can be discharged into the stream in such a manner that it can be used beneficially by prior appropriators, divert the natural flow of the stream for the irrigation of their lands in lieu of an equal amount of stored water, provided, however, that such exchange can be made without injury to said prior appropriators.

History: En. Sec. 1, Ch. 39, L. 1937; amd. Sec. 155, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department of natural resources and con-

servation" for "state water conservation board of the state of Montana."

Lawful Exchange

Owners of rights in canal who, because of the topography of the area, could not transport water from canal directly to their land, properly diverted the natural flow of creek for use on their land and replaced the water with water from the canal which intersected with stream below point of diversion. Thompson v. Harvey, — M —, 519 P 2d 963.

Misuse of Channel

Where petitioners for order authorizing change in point of diversion on creek asserted that protestors had misused channel on Deep Creek, by exchanging canal water for stream water which was removed at points above canal, this use of channel was specifically authorized in Montana law, and protestors did not have unclean hands. Thompson v. Harvey, — M —, 519 P 2d 963.

89-807 to 89-816. (7098 to 7106) Repealed.

Repeal

Sections 89-807 to 89- 816 (Secs. 5 to 13, pp. 131 to 133, L. 1885; Sec. 1, Ch. 44, L. 1905; Sec. 3, Ch. 228, L. 1921; Sec. 1, Ch. 64, L. 1937; Sec. 6, Ch. 158, L. 1967), relating to priority and recording of water appropriations, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-888 to 89-892.

89-820. (7110) Right to construct dams and raise water, etc.

Prescriptive Easement

This section has no application in case of prescriptive easement in water right since dominant tenement will not be required to pay for an easement acquired by prescription. O'Connor v. Brodie, 153 M 129, 454 P 2d 920.

89-821, 89-822. (7111, 7112) Repealed.

Repeal

These sections (Secs. 10, 11, p. 58, L. 1870), relating to ditches, dikes, flumes and canals crossing highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

89-823. (7113) Owners of water to sell surplus. Any person having the right to use, sell, or dispose of water and engage in using, selling, or disposing of the same who has a surplus of water not used or sold or any person having a surplus of water and the right to sell and dispose of the same is required, upon the payment or tender to the person entitled thereto of an amount equal to the usual and customary rates per inch or cubic foot of water per second, to convey and deliver to the person the surplus of unsold water or so much thereof for which the payment or tender has been made and shall continue to convey and deliver the same weekly so long as the surplus of unused or unsold water exists and the payment or tender is made as aforesaid.

History: En. Sec. 1, p. 406, L. 1877; re-en. Sec. 742, 5th Div. Rev. Stat. 1879; re-en. Sec. 1263, 5th Div. Comp. Stat. 1887; re-en. Sec. 1897, Civ. C. 1895; re-en. Sec. 4860, Rev. C. 1907; re-en. Sec. 7113, R. C. M. 1921; amd. Sec. 6, Ch. 460, L. 1977.

Amendments

The 1977 amendment inserted "or cubic foot of water per second" near the middle of the section; and made minor changes in phraseology and punctuation.

89-827, 89-828. (7117, 7118) Repealed.

Repeal

Sections 89-827 and 89-828 (Secs. 1901, 1902, Civ. C. 1895), forbidding the use of insecure dams and reservoirs and requiring that they be constructed in a thorough, secure and substantial manner, were repealed by Sec. 108, Ch. 253, Laws of 1974.

89-829 to 89-842. (7119 to 7124.1, 7125 to 7131) Repealed.

Repeal

Sections 89-829 to 89-842 (Sec. 1, Ch. 95, L. 1905; Secs. 1 to 3, Ch. 185, L. 1907; Secs. 4 to 12, Ch. 228, L. 1921; Secs. 1, 2, Ch. 38, L. 1927; Sec. 1, Ch. 179, L. 1957), relating to appropriation of waters of adjudicated streams, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-880 to 89-888.

89-844, 89-845. (7133, 7134) Repealed.

Repeal

Sections 89-844, 89-845 (Sec. 1, Ch. 70, L. 1905; Sec. 12, Ch. 185, L. 1907), relating to the effect of a decree of water rights and to the taking of ditches by eminent domain by the United States, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see sec. 89-877.

89-847 to 89-855. Repealed.

Repeal

Sections 89-847 to 89-855 (Secs. 1 to 9, Ch. 185, L. 1939; Secs. 6 to 9, Ch. 280, L. 1965), relating to adjudication of water rights in streams, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-870 to 89-879.

89-857 to 89-864. Repealed.

Repeal

Sections 89-857 to 89-864 (Secs. 1 to 8, Ch. 114, L. 1957), relating to the use of natural channels of unadjudicated streams for distribution of stored waters, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-880 to 89-889.

89-865. Short title. This act shall be known and may be cited as the "Montana Water Use Act."

History: En. Sec. 1, Ch. 452, L. 1973.

Title of Act

An act providing a system for the appropriation and use of surface and groundwater; providing a procedure for the determination and confirmation of existing water rights; establishing a system of centralized records of all water rights; repealing sections 89-121 through 89-123, 89-801 through 89-804, 89-807 through 89-816, 89-829 through 89-842, 89-844 and 89-845, 89-847 through 89-855, 89-857 through 89-864, 89-2912, 89-2913, 89-2919 through 89-2925, and 89-2935, R. C. M. 1947; amending sections 89-1001, 89-2911, 89-2915, 89-2917, and 89-2918, R. C. M. 1947.

89-866. Declaration of policy and purpose. (1) Pursuant to article IX of the Montana constitution, the legislature declares that any use of water is a public use, and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this act.

(2) A purpose of this act is to implement article IX, section 3(4) of the Montana constitution, which requires that the legislature provide for the administration, control, and regulation of water rights and establish a system of centralized records of all water rights. The legislature declares that this system of centralized records recognizing and establishing all water rights is essential for the documentation, protection, preservation and future beneficial use and development of Montana's water for the state and its citizens, and for the continued development and completion of the comprehensive state water plan.

(3) It is the policy of this state and a purpose of this act to encourage the wise use of the state's water resources by making them available for appropriation consistent with this act, and to provide for

the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities which store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana, for the stabilization of stream flows, and for groundwater recharge.

(4) Pursuant to article IX, section 3(4) of the Montana constitution, it is further the policy of this state and a purpose of this act to recognize and confirm all existing rights to the use of any waters for any useful or beneficial purpose.

History: En. Sec. 2, Ch. 452, L. 1973.

"All Existing Rights"

The right to acquire water rights is a valuable right, and its value often depends on its priority; hence, to deprive plaintiff of his priority by dismissal because petition was filed under former law is to deprive him of an existing and valuable water right. General Agriculture Corp. v. Moore, — M —, 534 P 2d 859.

Beneficial Impoundment

Counterclaim against petition of irrigation district for additional appropriation of water was properly denied where evidence was uncontradicted that water was going to waste and that impoundment would be beneficial. Sunset Irrigation District v. Ailport, — M —, 531 P 2d 1349.

89-867. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including geothermal water and diffuse surface water.

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other persons, or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses. A use of water for slurry to export coal from Montana is not a beneficial use. Slurry is a mixture of water and insoluble matter.

(3) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 89-890.

(4) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(5) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(6) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(7) "Permit" means the permit to appropriate issued by the department under 89-880 through 89-887.

(8) "Certificate" means the certificate of water right issued by the department under 89-879, 89-880(5), and 89-888.

(9) "Declaration" means the declaration of an existing right filed with the department under 89-872.

(10) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(11) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water, but not a private corporation, association, or group.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

(13) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(14) "Board" means the board of natural resources and conservation provided for in 82A-1509.

History: En. Sec. 3, Ch. 452, L. 1973; amd. Sec. 1, Ch. 192, L. 1974; amd. Sec. 1, Ch. 485, L. 1975; amd. Sec. 1, Ch. 416, L. 1977; amd. Sec. 7, Ch. 460, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 416 and once by Ch. 460. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment added the proviso to subdivision (2); and made minor changes in style.

The 1975 amendment substituted "chapter" for "act" in the introductory phrase; substituted "prior to July 1, 1973" for "prior to the effective date of this act" in subdivision (4); substituted "89-880(5)" in subdivision (8) for "89-880(4)"; inserted subdivision (11); redesignated former subdivisions (11) and (12) as subdivisions (12) and (13); deleted former subdivision (13) which read: "'Director' means the director of natural resources and conservation, a position provided for in section 82A-1510"; and added subdivision (15).

Chapter 416, Laws of 1977, added "and diffuse surface water" to subdivision (1); added "or any other entity" to subdivision (12); and made minor changes in punctuation.

Chapter 460, Laws of 1977, inserted "or can be obtained" in subdivision (6); deleted a former subdivision (15) reading "'Act' means the Montana Water Use Act and any subsequent amendments or additions thereto"; and made minor changes in phraseology, punctuation and style.

89-868. Powers and duties of department. (1) The department shall:

(a) enforce and administer this act and rules adopted by the board under section 5 [89-869];

(b) prescribe procedures, forms, and requirements for applications, permits, certificates, declarations, and proceedings under this act, and prescribe the information to be contained in any application, declaration or other document to be filed with the department under this act;

(c) keep in its Helena office a centralized public record of permits, certificates, declarations, applications, and other documents filed in its office under this act;

(d) co-operate with, assist, advise, and co-ordinate plans and activities with the federal, state, and local agencies in matters relating to this act;

(e) upon request by any person, co-operate with, assist, and advise that person in matters pertaining to measuring water or filing declarations with the department under this act.

(2) The department may:

(a) enter into agreements with federal, state, or local agencies necessary to carry out this act;

(b) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other public or private source for the purposes of this act.

History: En. Sec. 4, Ch. 452, L. 1973.

89-869. Powers and duties of board. (1) The board may prescribe fees or service charges for any public service rendered by the department under this act or under Title 89, chapter 29, including fees for the filing of applications or for the issuance of permits and certificates. There shall be no fees for the filing of declarations or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this act. These rules may include, but are not limited to, rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this act to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals, and to file reports on appropriations; and

(d) regulate the construction, use and sealing of wells to prevent the waste, contamination or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

History: En. Sec. 5, Ch. 452, L. 1973; amd. Sec. 1, Ch. 238, L. 1974; amd. Sec. 2, Ch. 485, L. 1975.

Amendments

The 1974 amendment added subdivision (2)(e).

The 1975 amendment deleted subdivision (2)(e) which read: "govern the issuance and terms of interim approval, authorizing an appropriator to change his appropriation right immediately pending final approval or denial by the department of the application for a proposed change in accordance with section 89-892"; and made changes in phraseology and punctuation.

89-870. Determination of existing rights. (1) The department shall establish a centralized record system of all existing rights, and the department shall, as soon as practicable, begin proceedings under this act to determine existing rights. To accomplish this, the department shall gather data essential to the proper understanding and determination of those existing rights.

(2) The department may select and specify areas or sources where the need for a determination of existing rights is most urgent, and first begin proceedings under this act to determine the existing rights in those areas or sources.

History: En. Sec. 6, Ch. 452, L. 1973.

89-871. Data for determination of existing rights. The data gathered by the department for the determination of existing rights shall include, but are not limited to:

(1) court decrees adjudicating water rights in a proceeding commenced prior to the effective date of this act. Upon request of the department, the clerks of the district courts shall furnish the department copies of all decrees affecting water rights;

(2) declarations of existing rights filed under section 8 [89-872];

(3) records of rights acquired under the groundwater code (sections 89-2911 through 89-2936);

(4) notices of appropriation filed under sections 89-801.2 and 89-810;

(5) records of declarations filed under sections 89-121 and 89-813;

(6) records of statements filed under section 89-907;

(7) the findings of water resource surveys conducted by the department and its predecessor agencies;

(8) the findings of inspections, surveys, reconnaissance, and investigations of the area or source involved as the department makes.

History: En. Sec. 7, Ch. 452, L. 1973.

Compiler's Notes

Sections 89-2912, 89-2913, 89-2919 to 89-2925 and 89-2935, contained in the reference to sections 89-2911 through 89-2936 in subdivision (3), were repealed by Sec. 46, Ch. 452, Laws 1973. Sections 89-801.2 and 89-810, referred to in subdivision (4), sections 89-121 and 89-813, referred to in subdivision (5), were repealed by Sec. 46, Ch. 452, Laws 1973.

DECISIONS UNDER FORMER LAW

Defective Notice of Appropriation

A notice of appropriation filed before the 1885 act but defective in that it was not verified as required by former sections 89-810 and 89-813 not only was not accorded the status of prima facie evidence under former section 89-814 but was not even admissible in evidence. Shammel v. Vogl, 144 M 354, 396 P 2d 103, 111.

Where a notice of appropriation was dated 1886, referred to acts taking place in 1886, and was recorded in 1886, but the notary's certificate was dated 1885, it is obvious from the instrument itself that the date in the notary's certificate was a clerical error, and the notice may be received as prima facie evidence of a right dating from 1886. Shammel v. Vogl, 144 M 354, 396 P 2d 103, 112.

Rebuttal of Prima Facie Evidence

A notice of appropriation meeting the requirements of former section 89-810 and filed in 1886 was admissible in evidence and entitled to be treated as prima facie evidence under former section 89-814 but was not sufficient in itself to establish a water right from that date when its efficacy was destroyed by the claimant's own statement that he first used the water in 1961. Shammel v. Vogl, 144 M 354, 396 P 2d 103, 113.

89-872. Declarations of existing rights. (1) The department shall obtain from the district court an order pursuant to section 89-873 requiring each person claiming an existing right within a specified area or from a specified source to file a declaration of existing right within one (1) year after the effective date of the order. The department shall publish notice

of the order once a week for four (4) consecutive weeks prior to its effective date in a newspaper of general circulation in the affected area. Before the last date of publication, the department shall also serve a copy of the order by certified mail upon each appropriator or his successor in interest within the specified area or from the specified source who has requested mailed notice of the order or of whom the department can readily obtain knowledge, and to each person owning or being possessed of lands bordering on the stream or source as ascertained from the land ownership records of the appropriate county. The department shall file in its records proof of service of the notice by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(a) The department of fish and game may represent the public for purposes of establishing any prior and existing public recreational use in existing right determinations under this act, provided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.

(2) A declaration shall be made under oath by each person claiming an existing right to use water within the specified area or from the specified source on a form provided by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The information required by the department may include, but is not limited to, the date of appropriation, the date the water was first applied to a beneficial use, the amount of water appropriated, the purpose of the appropriation, the place and means of diversion, the place of use, the time during which the water is diverted and used each year, and a true copy or the docket number of any judicial decree, notice, or other claim or evidence upon which the existing right was initiated or is based.

(3) Declarations shall be sent to the department by certified mail, with a return receipt requested. The return receipt is conclusive evidence of receipt, by the department, of the declaration.

History: En. Sec. 8, Ch. 452, L. 1973; amd. Sec. 1, Ch. 265, L. 1974; amd. Sec. 3, Ch. 485, L. 1975.

Amendments

The 1974 amendment inserted subdivision (1)(a).

The 1975 amendment substituted "shall obtain from the district court an order pursuant to section 89-873" for "shall make an order" at the beginning of subsection (1).

89-873. Filing of petition. (1) Proceedings for the determination of existing rights shall be commenced by the department in the district court of the judicial district in which the source or area is located. The department shall request by petition, and the district court shall issue an order requiring each person claiming an existing right within a specified area or from a specified source to file a declaration as provided in section 89-872.

(2) If the source or area is in two (2) or more judicial districts, the department shall notify the district court of each of the judicial districts of its intent to file the petition. Within thirty (30) days of receipt of the

notice, the judges of those district courts shall agree on which district shall receive the petition and shall notify the department of their decision. If the district judges fail to agree or to notify the department, the department shall file the petition in the district court of the judicial district in which it determines that the greatest number of existing rights are likely to be located.

History: En. Sec. 9, Ch. 452, L. 1973; amd. Sec. 4, Ch. 485, L. 1975.

Amendments

The 1975 amendment rewrote subsection (1) which read: "The department shall, within a reasonable time after gathering all data necessary under section 7 of this act, file a petition for determination of existing rights in the source or area specified in the order made under section 8. The department shall file the petition in the district court of the judicial district in which the source or area is located"; substituted "district shall receive the petition" in the second sentence in subsection (2) for "district judge shall hear the petition"; and substituted at the end of the last sentence "in which it determines that the greatest number of existing rights are likely to be located" for "in which the greatest number of persons named in the petition reside."

89-874. Contents of petition. (1) Within a reasonable time after gathering all data necessary under section 89-871, the department shall file with the district court the names of all persons who have filed declarations under section 89-872 and of all other persons who appear from the data gathered by the department to have existing rights to the use of waters within the specified area or from the specified source.

(2) The department shall also file with the district court all data gathered under section 89-871.

(3) If the district court determines that additional data is necessary prior to issuing the preliminary decree in order to determine the extent of an existing right, it may direct the department or the person claiming the right to obtain the necessary data.

History: En. Sec. 10, Ch. 452, L. 1973; amd. Sec. 5, Ch. 485, L. 1975.

Amendments

The 1975 amendment substituted "Within a reasonable time after gathering all data necessary under section 89-871, the department shall file with the district court the names" in subsection (1) for "The petition shall state the names"; substituted "shall also file with the district court all data gathered under section 89-871" in subsection (2) for "shall file with the petition all data gathered under section 7 of this act"; and made a minor change in style.

89-875. Preliminary decree. (1) Within a reasonable time after the department files with the district court the material required by section 89-874, the court shall issue a preliminary decree. The preliminary decree shall be based on the data submitted by the department and on any additional data obtained by the court.

(2) The preliminary decree shall contain the information, and make the determinations, findings, and conclusions, required for the final decree under section 89-877.

(3) The district court shall send a copy of the preliminary decree to the department, and the department shall serve by mail or by personal service a copy of the preliminary decree to each person named in the material submitted under section 89-874 or named in the preliminary decree. The department shall file proof of service with the district court.

(4) A person named in the material or in the preliminary decree may inspect the data upon which the decree is based at any time, and he may purchase copies of any of the data.

History: En. Sec. 11, Ch. 452, L. 1973; amd. Sec. 6, Ch. 485, L. 1975; amd. Sec. 2, Ch. 416, L. 1977.

Amendments

The 1975 amendment substituted "after the department files with the district court the material required by section 89-874" in subsection (1) for "after the filing of a petition for determination of existing rights"; substituted "submitted by the department" for "submitted with the petition" in subsection (1); substituted "section 89-877" for "section 13 of this act" in subsection (2); substituted "material submitted under section 89-874" for "the petition filed under section 9 of this act" in subsection (3); and substituted "the material" in subsection (4) for "the petition."

The 1977 amendment deleted "by certified mail with return requested" after "send a copy of the preliminary decree" in the first sentence of subsection (3); inserted "the department shall serve by mail or by personal service a copy of the preliminary decree" in the first sentence of subsection (3); substituted the last sentence of subsection (3) for a sentence reading "The return receipt shall be appended to the preliminary decree"; deleted a sentence at the end of subsection (3) reading "The costs of mailing the copies shall be paid by the department"; and made a minor change in punctuation.

89-876. Hearing on preliminary decree. (1) The department or a person named in the material filed under section 89-874 or named in the preliminary decree, or any other person for good cause shown, who objects to the preliminary decree is entitled to a hearing thereon before the district court.

(2) A request for a hearing shall be filed with the district court, and a copy served on the department by certified mail, within ninety (90) days after receipt of the preliminary decree. The district court shall, for good cause shown, reasonably extend this time limit if application for the extension is made within ninety (90) days after receipt of the preliminary decree. A person requesting a hearing on his objections to the preliminary decree shall also serve, by certified mail with return receipt requested, a copy of his request on any person whose rights or priorities will be affected if the objections are sustained in the hearing. The rights and priorities of a person who is not served shall not be affected by the result of the hearing.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions, in the preliminary decree, with which the person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based. The request shall also state the names of all other persons on whom it is served.

(4) If more than one person requests a hearing on objections to the preliminary decree, the court may in its discretion hold a single hearing. Each hearing shall be conducted as are other civil actions, but the parties to the hearing may by agreement and with the court's permission waive any of the procedural or evidentiary rules, or may submit only written evidence. Only evidence which is referred to in a request may be introduced in a hearing.

(5) In each hearing, the department shall be a party and is entitled to be heard on objections made by any person. The department shall be granted adequate time, prior to a hearing, to gather evidence pertinent to any objection to be heard in the hearing.

History: En. Sec. 12, Ch. 452, L. 1973; amd. Sec. 7, Ch. 485, L. 1975.

Amendments

The 1975 amendment substituted "in the material filed under section 89-874" for "in the petition filed under section 9 of this act" in subsection (1).

89-877. Final decree. (1) The court shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the court shall enter it as the final decree.

(2) The final decree shall establish the existing rights and priorities, of the persons named in the petition, for the source or area under consideration.

(3) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person named in the decree are based.

(4) For each person who is found to have an existing right, the final decree shall state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water, rate and volume, included in the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the approximate time during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(5) The final decree in each existing right determination is final and conclusive as to all existing rights in the source or area under consideration. After the final decree there shall be no existing rights to water in the area or source under consideration except as stated in the decree.

History: En. Sec. 13, Ch. 452, L. 1973; amd. Sec. 3, Ch. 416, L. 1977.

Amendments

The 1977 amendment inserted "rate and volume" in subdivision (4)(b).

DECISIONS UNDER FORMER LAW

Collateral Attack

A decree giving appropriator the right to use water on certain named land outside the drainage area where appropriated could not be attacked in a later proceeding on the ground that appropriator had never applied water to that land. McIntosh v. Graveley, 159 M 72, 495 P 2d 186.

89-878. Appeals from final decree. (1) A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(a) he requested a hearing and appeared and entered objections to the preliminary decree; or

(b) his rights as determined in the preliminary decree were altered as the result of a hearing, at which he appeared, requested by another person.

(2) An appeal from the final decree shall be taken as provided by the Montana Rules of Appellate Civil Procedure.

History: En. Sec. 14, Ch. 452, L. 1973.

89-879. Certificate of water right. When a final decree is entered, the court shall send a copy to the department. The department shall, on the basis of the final decree, issue to each person decreed an existing right a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the person to whom the right is decreed.

History: En. Sec. 15, Ch. 452, L. 1973.

89-880. Right to appropriate—application for permit. (1) After July 1, 1973, a person may not appropriate water except as provided in this act. A person may only appropriate water for a beneficial use. A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription or estoppel; the method prescribed by this act is exclusive.

(2) Except as otherwise provided in subsection (5) of this section, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed and refiled with the department within thirty (30) days after its return to the applicant, or within a further time as the department may allow. If an application is not corrected and completed within 30 days or within a further time as the department allows, up to 18 months, the priority date of the application shall be the date of refiling the application with the corrections with the department. An application not corrected within 18 months shall be terminated.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is

not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

(4) A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any vested right, to an appropriation obtained under a provisional permit, by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action, where the permit would have been denied or modified if the final decree had been available to the department.

(5) (a) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well with a maximum yield of less than 100 gallons a minute. Within 60 days of completion of the well and appropriation of the groundwater for beneficial use, the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerks and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(b) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is from a source other than a perennial flowing stream. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, before constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this act. If the department determines after processing the application that the rights of other appropriators have been or will be adversely affected, it may require the applicant to modify the construction of the impoundment or pit, and issue the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(6) A person who desires to convert a nonproductive oil or gas well to a water well may do so immediately, but shall file a notice of completion or apply for a permit, depending on the maximum yield of the well, as otherwise provided in this act. The date of appropriation shall be the date of filing the notice of completion or the application for a permit.

(7) A person may also appropriate water, without applying for or prior to receiving a permit, under rules adopted by the board under section 89-869 of this act.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 416 and once by Ch. 470. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment substituted "may not appropriate water * * * except by" for "may appropriate water only by" in subsection (2); deleted "for domestic, agricultural, or livestock purposes" after "appropriating groundwater" in subsection (4); and made a minor change in style.

The 1975 amendment substituted "July 1, 1973" for "the effective date of this act" in subsection (1); inserted subsection (3); redesignated former subsections (3) to (6) as subsections (4) to (7); deleted the first two sentences of subsection (6) which read: "Persons required to file well logs and other information under the laws governing the conservation of oil and gas and who do so in compliance with those laws, shall be considered to have complied with all of the filing requirements of this act to the extent it applies to wells subject to those laws. The date of appropriation shall be the date that written notice of intention to drill is given to the board of oil and gas conservation"; added the last sentence of subsection (6); and redesignated references to the subsections within the section.

Chapter 416, Laws of 1977, added the last two sentences in subsection (2); inserted "and appropriation of the groundwater for beneficial use" in the second sentence of subsection (5); and made minor changes in style.

Chapter 470, Laws of 1977, designated former subsection 5 as subdivision (5)(a); and added subdivision (5) (b).

89-881. Notice of application. (1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for three (3) consecutive weeks. Before the last date of publication, the department shall also serve the notice by certified mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. A notice shall also be served upon any public agency that has reserved waters in the source under section 89-890. The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than thirty (30) days nor more than sixty (60) days after the last date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons.

History: En. Sec. 17, Ch. 452, L. 1973; amd. Sec. 9, Ch. 485, L. 1975.

Amendments

The 1975 amendment added subsection (3); and made a minor change in style.

89-882. Objections. (1) An objection to an application must be filed by the date specified by the department under section 17 (2) [89-881 (2)].

(2) The objection must state the name and address of the objector, and facts tending to show that there are no unappropriated waters in the proposed source, that the proposed means of appropriation are inadequate, that the property, rights, or interests of the objector would be adversely affected by the proposed appropriation, or the objector may state any other objections to the proposed appropriation he considers pertinent.

History: En. Sec. 18, Ch. 452, L. 1973.

89-883. Hearings on objections. If the department determines that an objection to an application for a permit states a valid objection to the issuance of the permit, it shall hold a public hearing on the objection within sixty (60) days from the date set by the department for the filing of objections, after serving notice of the hearing by certified mail upon the applicant and the objector. The department may consolidate hearings if more than one (1) objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

History: En. Sec. 19, Ch. 452, L. 1973.

89-884. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within one hundred twenty (120) days after the last date of publication of the notice of application if no hearing is held, and within one hundred eighty (180) days if a hearing is held; however, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended it shall serve a notice of the extension and the reasons therefor by certified mail upon the applicant and each person who has filed an objection as provided by section 89-882.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department, nor denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application, but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions or limitations specified by it, or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within thirty (30) days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner, or denied, unless a hearing is requested.

History: En. Sec. 20, Ch. 452, L. 1973; amd. Sec. 10, Ch. 485, L. 1975; amd. Sec. 5, Ch. 416, L. 1977.

Amendments

The 1975 amendment added to the first sentence of subsection (1) "however, in either case the time may be extended upon agreement of the applicant, or, in extraordinary cases, not more than thirty (30) days upon order of the department"; and added the second sentence in subsection (1).

The 1977 amendment substituted "in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days" near the end of the first sentence of subsection (1) for "in extraordinary cases, not more than thirty (30) days."

89-885. Criteria for issuance of permit. The department shall issue a permit if:

(1) there are unappropriated waters in the source of supply:

(a) at times when the water can be put to the use proposed by the applicant;

(b) in the amount the applicant seeks to appropriate; and

(c) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(2) the rights of a prior appropriator will not be adversely affected;

(3) the proposed means of diversion or construction are adequate;

(4) the proposed use of water is a beneficial use;

(5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(6) an applicant for an appropriation of 10,000 acre-feet a year or more or 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected.

History: En. Sec. 21, Ch. 452, L. 1973; amd. Sec. 1, Ch. 156, L. 1975; amd. Sec. 1, Ch. 307, L. 1977; amd. Sec. 6, Ch. 416, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 307 and once by Ch. 416. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1975 amendment added subdivision (6); and made a minor change in punctuation.

Chapter 307, Laws of 1977, added subdivisions (1)(a) through (1)(c).

Chapter 416, Laws of 1977, inserted "10,000 acre-feet a year or more or" in subdivision (6).

Beneficial Impoundment

Counterclaim against petition of irrigation district for additional appropriation of water was properly denied where evidence was uncontradicted that water was going to waste and that impoundment would be beneficial. Sunset Irrigation District v. Ailport, — M —, 531 P 2d 1349.

89-886. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. It may issue a permit subject to terms, conditions, restrictions, and limitations it con-

siders necessary to protect the rights of other appropriators, and it may issue temporary or seasonal permits. A permit shall be issued subject to existing rights and any final determination of those rights made under this act.

(2) The department may limit the time for commencement of the appropriation works, completion of construction and actual application of the water to the proposad beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. For good cause shown by the permittee, the department may in its discretion reasonably extend time limits.

(3) The original of the permit shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation, and a copy shall be kept in the office of the department in Helena. After recordation, the clerk and recorder shall send the permit to the permittee.

History: En. Sec. 22, Ch. 452, L. 1973.

89-887. Revocation of permit. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof, or if the water is not being applied to the beneficial use contemplated in the permit, or if the permit is otherwise not being followed, the department may after notice require the permittee to show cause why the permit should not be revoked. If the permittee fails to show sufficient cause, the department may revoke the permit.

History: En. Sec. 23, Ch. 452, L. 1973.

89-888. Certificate of water right. (1) Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. The department may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder in the county wherein the point of diversion or place of use is located for recordation, and a duplicate shall be kept in the office of the department in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator.

(2) Except as provided in section 16 (4) [89-880 (4)] of this act, a certificate of water right in a particular source may not be issued prior to a general determination under this act of existing rights in that source.

History: En. Sec. 24, Ch. 452, L. 1973.

89-889. Reservoirs. A person intending to appropriate water by means of a reservoir shall apply for a permit as prescribed in this act.

History: En. Sec. 25, Ch. 452, L. 1973.

89-890. Reservation of waters. (1) The state or any political subdivision or agency thereof, or the United States or any agency thereof, may apply to the board to reserve waters for existing or future beneficial uses, or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with sections 89-881 through 89-883. After the hearing provided in section 89-883, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records, incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

(a) the purpose of the reservation;

(b) the need for the reservation;

(c) the amount of water necessary for the purpose of the reservation;

(d) that the reservation is in the public interest. If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(4) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters, or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(5) A reservation under this section shall date from the date the order reserving the water is adopted by the board, and shall not adversely affect any rights in existence at that time.

(6) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke or modify the reservation.

History: En. Sec. 26, Ch. 452, L. 1973; amd. Sec. 11, Ch. 485, L. 1975; amd. Sec. 7, Ch. 416, L. 1977.

Amendments

The 1975 amendment substituted "shall date from the date the order reserving the water is adopted by the board, and shall not adversely affect any rights in existence at that time" in subsection (5) for "shall not affect any rights in existence when the order reserving water is adopted"; and made minor changes in style.

The 1977 amendment substituted "at least once every 10 years" in the first sentence of subsection (6) for "not less than every ten (10) years."

89-891. Priority. (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow, or the lowering

of a water table, artesian pressure or water level, if the prior appropriator can reasonably exercise his water right under the changed conditions.

(2) Priority of appropriation made under this act dates from the filing of an application for a permit with the department, except as otherwise provided in section 16 [89-880] of this act.

(3) Priority of appropriation perfected before the effective date of this act shall be determined as provided in sections 6 through 15 [89-870 through 89-879] of this act.

History: En. Sec. 27, Ch. 452, L. 1973.

Right of Priority

Priority of application for water appropriation is an existing right which is preserved from extinction by repeal of the former law by the provisions of article IX, section 3 of the 1972 Montana constitution. **General Agriculture Corp. v. Moore,** — M —, 534 P 2d 859.

89-891.1. Water turned into natural channels. Water appropriated under an existing right or pursuant to this act may be turned into the natural channel of another stream, or from a reservoir into the natural channel, and withdrawn or diverted at a point downstream for beneficial use, but the waters of that stream may not thereby be diminished in quantity or deteriorated in quality to the detriment of a prior appropriator. Water stored in a reservoir under an existing right or pursuant to this act which is turned into a natural channel for withdrawal or diversion and beneficial use downstream shall not be considered a part of the natural flow of that stream.

History: En. 89-891.1 by Sec. 1, Ch. 103, L. 1974.

Title of Act

An act recognizing the right to turn water into natural channels, adding a new section to the Water Use Act.

89-892. Changes in appropriation rights. (1) An appropriator may not change the place of diversion, place of use, purpose of use or place of storage except as permitted under this section and approved by the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with section 89-881. If the department determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of section 89-882(2), and hearings shall be held in accordance with section 89-883.

(3) An appropriator of more than fifteen (15) cubic feet per second may not change the purpose of use of an appropriation right from an agricultural use to an industrial use.

(4) The department may approve a change subject to such terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, including limitations on the time for completion of the change.

(5) If a change is not completed as approved by the department or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

History: En. Sec. 28, Ch. 452, L. 1973; amd. Sec. 3, Ch. 238, L. 1974; amd. Sec. 1, Ch. 338, L. 1975; amd. Sec. 8, Ch. 416, L. 1977.

Amendments

The 1974 amendment inserted the second sentence in subsection (2); substituted "If the department determines * * * valid objection to the proposed change" in the third sentence for "If a person whose rights may be affected files an objection to the proposed change"; deleted after the present third sentence a sentence which read "Notice of the proposed change shall be given in accordance with section 17 [89-881] of this act"; and made minor changes in style.

The 1975 amendment substituted "storage except as permitted under this section and approved by" in subsection (1) for "storage without receiving prior approval of such change from"; and added subsection (3).

The 1977 amendment added subsections (4) and (5).

Enlargement of Dam

Permission for additional appropriation on adjudicated stream was proper where findings indicated that there was surplus water to be appropriated, there would be no injury to prior appropriators, impoundment of water would be beneficial, and the proposed dam could be operated so as not to interfere with others. Sunset Irrigation District v. Ailport, — M —, 531 P 2d 1349.

DECISIONS UNDER FORMER LAW

Burden of Proof

In petition for order authorizing change in point of diversion on creek, where objectors were able to show that proposed diversion would reduce by 20% the amount of water available for those with inferior rights located above canal, district court was correct in refusing to authorize the change. Thompson v. Harvey, — M —, 519 P 2d 963.

Diversion Point Changed

Appropriator was entitled to move his point of diversion downstream, so long as he installed measuring devices to ensure that he took no more than would have been available at his original point of diversion, and the fact that a water commissioner might have to be employed to oversee the appropriation was not the kind of burden on other appropriators that would prevent the change. McIntosh v. Graveley, 159 M 72, 495 P 2d 186.

Remedies of Servient Owner

Changes in a ditch appurtenant to a water right did not forfeit the ditch right or justify the use of self-help by the servient landowner to fill in a portion of the ditch. Shammel v. Vogl, 144 M 354, 396 P 2d 103, 108.

Substantial Change

Under former section 89-803, the owner of a ditch appurtenant to a water right could change the location by minor meandering along the course of the ditch and its marginal land with a dozer to account for topographical adjustments in the terrain, so long as he did not add any new burden to the servient estate or cause any additional damage thereto. Shammel v. Vogl, 144 M 354, 396 P 2d 103, 109.

Use of Water Changed

Where appropriator had a decreed right to use water for irrigation of specified land outside the drainage area, his use of the water on other land outside the drainage area did not impose an undue burden on other appropriators, so long as he did not increase the amount of water diverted from the drainage area. McIntosh v. Graveley, 159 M 72, 495 P 2d 186.

89-893. Transfer of appropriation right. (1) The right to use water under a permit or certificate of water right shall pass with a conveyance of the land, or transfer by operation of law, unless specifically exempted

therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

(2) The person receiving the appropriation interest shall file with the department notice of the transfer on a form prescribed by the department.

(3) An appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, or sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands, without obtaining prior approval from the department. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with section 89-881. If the department then determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of section 89-882(2) and hearings shall be held in accordance with section 89-883.

History: En. Sec. 29, Ch. 452, L. 1973; amd. Sec. 4, Ch. 238, L. 1974.

Amendments

The 1974 amendment rewrote subsection (2) which read: "A copy of an instrument which transfers an interest in an appropriation right shall be filed with the department and the county, in which the point of diversion or place of use is located, by the person receiving the appropriation interest"; and rewrote the second sentence of subsection (3) which read: "The department shall approve the proposed transfer if the requirements of section 28(2) [89-8922] are met."

Effective Date

Section 5, Ch. 238, Laws of 1974 read "This act is effective on its passage and approval. The amendments made by this act apply to any application for a permit, change in appropriation right, or transfer of appropriation right, received by the department before the effective date of this act, and which has not yet been approved, granted, denied, or modified." Approved March 21, 1974.

89-894. Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right, or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right, or ceases using his appropriation right according to its terms and conditions, for a period of ten (10) successive years, and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) This section does not apply to existing rights until they have been determined in accordance with this act.

History: En. Sec. 30, Ch. 452, L. 1973.

DECISIONS UNDER FORMER LAW

Intent to Abandon

Mere nonuser of a ditch appurtenant to a water right is not sufficient to establish abandonment; there must be concurrent intent to abandon. Shammel v. Vogl, 144 M 354, 396 P 2d 103, 107.

89-895. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned his appropriation right under section 30 [89-894], or when another appropriator in the opinion of the department files a valid claim that he has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the district court which determined the existing rights in the source of the appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section shall be conducted in accordance with the Montana Rules of Civil Procedure, and appeal shall be taken in accordance with the Montana Rules of Appellate Civil Procedure.

(2) At the hearing, the burden of proof shall be on the department which must establish by a preponderance of the evidence that the appropriation has been abandoned under section 30 [89-894] of this act.

(3) The determination of the court shall be appended to the final decree. The department shall keep a copy of the determination in its office in Helena.

History: En. Sec. 31, Ch. 452, L. 1973.

89-896. Supervision of water distribution. (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to the effective date of this act. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to sections 89-870 through 89-879, any party to the controversy may petition the district court for relief. The department shall be served with process in any proceeding under this subsection and shall, within a reasonable time thereafter, notify the court whether it intends in its discretion, within a reasonable time, to begin proceedings to determine existing rights in the source, in accordance with this act. The department may, if it declines to commence proceedings to determine existing rights in the source, intervene as a party in the proceeding. The district court from which relief is sought may grant such injunctive or other relief which is necessary and appropriate to preserve property rights or the status quo pending the department's decision whether to determine existing rights in the source, or the department's decision to intervene as a party, as the case may be. If the department does not proceed to obtain a determination of existing rights, the district court shall settle only the controversy between the parties.

(3) A controversy between appropriators from a source which has been the subject of a general determination of existing rights under sections 89-870 through 89-879 shall be settled by the district court which issued the final decree. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree. In cases involving permits issued by the department, the court

may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy shall be appended to the final decree, and a copy shall be filed with the department. The department shall be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

History: En. Sec. 32, Ch. 452, L. 1973; amd. Sec. 12, Ch. 485, L. 1975.

Amendments

The 1975 amendment deleted "As of the effective date of this act" from the beginning of subsection (1); inserted "or subsequent" in subsection (1); added "any party to the controversy may petition the district court for relief" to the end of the first sentence of subsection (2); inserted "shall be served with process in any proceeding under this subsection and shall, within a reasonable time thereafter, notify the court whether it intends" in the second sentence of subsection (2); inserted "to" before "begin proceedings" in the second sentence of subsection (2); inserted the third and fourth sentences of subsection (2); substituted the last sentence of subsection (3) for a former subsection (4) which read "The department shall be named as a party in any proceeding under this section and shall be served with process"; and made minor changes in phraseology and style.

89-897. Prevention of waste. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, or preventing water from moving to another person having a prior right to use the same, it may petition the district court to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water, or to secure water to a person having a prior right to its use; the department may attach to the controlling works a written notice properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it, which notice shall be legal notice to all persons interested in the appropriation or distribution of the water; or

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so, and to take such steps as may be necessary to remedy the waste, unlawful use, or interference; or

(2) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin such waste, unlawful use, or interference.

History: En. Sec. 33, Ch. 452, L. 1973.

89-898. Entry on land—inspections. Any employee or agent of the department authorized by the director may enter upon any land to carry out the purpose of this act, including, but not limited to, entry to make inspections the department considers necessary of proposed works, source of water, location of the proposed use, construction of works and other inspections to ascertain whether or not persons are complying with this act. The department or its agent shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to any property.

History: En. Sec. 34, Ch. 452, L. 1973.

89-899. Legal assistance. (1) When requested by the department, the attorney general and the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this chapter. The department may also employ legal counsel to enforce this chapter and to conduct proceedings under it.

(2) If an appropriator who is a citizen of Montana becomes involved in a controversy to which any agency of the federal government or another state is a party, the department may in its discretion intervene as a party or provide necessary legal assistance to the citizen of Montana.

History: En. Sec. 35, Ch. 452, L. 1973; amd. Sec. 9, Ch. 460, L. 1977.

Amendments

The 1977 amendment substituted "chapter" two places in subsection (1) for "act."

89-8-100. Administrative proceedings. The Montana Administrative Procedure Act (Title 82, chapter 42, R.C.M. 1947) governs administrative proceedings conducted under this act, except that the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a proceeding.

History: En. Sec. 36, Ch. 452, L. 1973; amd. Sec. 13, Ch. 485, L. 1975; amd. Sec. 9, Ch. 416, L. 1977.

Amendments

The 1975 amendment inserted "under this act" in the first sentence of subsection (1); added the second sentence in subsection (1); and added "except that the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a proceeding" to subsection (2).

The 1977 amendment deleted subsection (1) which read: "A person who is aggrieved by a final decision of the department under this act is entitled to a hearing before the board. A person desiring a hearing before the board pursuant to this section shall notify the department in writing within ten (10) days of the final decision."

89-8-100.1. Recovery of attorney fees by prevailing party. If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable attorney fees.

History: En. 89-8-100.1 by Sec. 11, Ch. 416, L. 1977.

Title of Act

An act to amend sections 89-867, 89-875, 89-877, 89-880, 89-884, 89-885, 89-890, 89-892, 89-8-100, and 89-8-107, R. C. M. 1947, of the Montana Water Use Act to clarify definitions; to reduce the cost of serving copies of preliminary decrees; to clarify the findings to be made by the court in the final decree; to provide for the priority date of certain refiled applications; to terminate certain uncorrected applications; to clarify the refiling of notices of completion of small wells; to provide for the extension of time to act upon applications in extraordinary cases; to provide that an applicant for an appropriation of 10,000 acre-feet a year or more must prove by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected; to clarify the periodic review by the board of reservations of water; to provide that the department may approve changes in appropriation rights with conditions to protect other appropriators; to eliminate the right to appeal a final decision of the department to the board; to allow the United States to apply for reservations of water; to provide that attorney fees shall be awarded to the prevailing party in any court litigation on an application for a permit; and providing for an immediate effective date.

Effective Date

Section 12 of Ch. 416, Laws 1977 provided the act should be effective upon its passage and approval. Approved April 18, 1977.

89-8-101. Penalties. A person who violates or refuses or neglects to comply with sections 16 (1), 28 (1), and 29 (3) [89-880 (1), 89-892 (1), and 89-893 (3)] of this act, or of any order of the department, or of any rule of the board, is guilty of a misdemeanor.

History: En. Sec. 37, Ch. 452, L. 1973.

89-8-102. Deposit of fees and penalties. All fees and penalties collected under this act shall be deposited in the state general fund. All penalties or fines imposed by any court for a violation of this act shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine.

History: En. Sec. 38, Ch. 452, L. 1973.

89-8-102.1. Saving clause. Nothing in this act abates or otherwise adversely affects the validity of any filing, notice, or judicial proceeding commenced under the law as it existed before July 1, 1973.

History: En. 89-8-102.1 by Sec. 14, Ch. 485, L. 1975.

Title of Act

An act to amend the Montana Water Use Act by providing additional definitions; deleting the power of the board of natural resources and conservation to adopt rules governing interim approval of a change of an appropriation right; providing that the department shall cease action on applications not in good faith or not showing a bona fide intent to appropriate water for a beneficial use; requiring the district court rather than the department to issue the order requiring claimants of existing rights to file declarations; clarifying the priority date for converted oil or gas wells; allowing suspension of publication of notice of certain permit applications; providing for extension of time to act on an application; clarifying the priority date for reservations of water; clarifying the procedure to be followed in the courts' supervision of water distribution; providing a new section for administrative enforcement of the act; requiring notification prior to hearings before the board; specifying the applicability of the rules of evidence in administrative hearings; providing a saving clause; amending sections 89-867, 89-869, 89-872 through 89-876, 89-880, 89-881, 89-884, 89-890, 89-896, 89-8-100, and 89-8-101, R. C. M. 1947; and providing for an immediate effective date.

Saving Clause

Section 15 of Ch. 485, Laws 1975 read "This act applies to applications currently pending with the department, as well as applications filed with the department after the effective date of this act."

Effective Date

Section 16 of Ch. 485, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 21, 1975.

89-8-102.2. Fees for environmental impact statements. (1) Whenever the department determines that the filing of an application (or a combination of applications) for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act (Title 69, chapter 65, R.C.M. 1947), and the application (or combination of applications) involves the use of ten thousand (10,000) or more acre feet per year or fifteen (15) or more cubic feet per second of water, the applicant shall pay to the department the fee prescribed in this section. The department shall notify the applicant in writing within thirty (30) days of receipt of a correct and complete application (or a combination of applications), if it determines that an environmental impact statement and fee is required.

(2) Upon notification by the department under subsection (1) of this section, the applicant shall pay a fee based upon the estimated cost of constructing, repairing or changing the appropriation and diversion facilities as herein provided. The maximum fee that shall be paid to the department may not exceed the fees set forth in the following declining scale: two percent (2%) of the estimated cost up to one million dollars ($1,000,000); plus one percent (1%) of the estimated cost over one million dollars ($1,000,000) and up to twenty million dollars ($20,000,000); plus one-half of one percent (0.5%) of the estimated cost over twenty million dollars ($20,000,000) and up to one hundred million dollars ($100,000,000); plus one-quarter of one percent (0.25%) of the estimated cost over one hundred million dollars ($100,000,000) and up to three hundred million dollars ($300,000,000); plus one-eighth of one percent (.125%) of the estimated cost over three hundred million dollars ($300,000,000). The fee shall be deposited in the earmarked revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the application(s). Any amounts paid by the applicant but not actually expended by the department shall be refunded to the applicant.

(3) The department and the applicant may determine by agreement the estimated cost of any facility for purposes of computing the amount of the fee to be paid to the department by the applicant. The department may contract with an applicant for:

(a) the development of information by the applicant or a third party on behalf of the department and the applicant concerning the environmental impact of any proposed activity under an application;

(b) the division of responsibility between the department and an applicant for supervision over, control of, and payment for the development of information by the applicant or a third party on behalf of the department and the applicant under any such contract or contracts;

(c) the use or nonuse of a fee or any part thereof paid to the department by an applicant.

(4) Any payments made to the department or any third party by an applicant under any such contract or contracts shall be credited against any fee the applicant must pay hereunder. The department and the applicant may agree on additional credits against the fee for environmental work performed by the applicant at the applicant's own expense.

(5) No fee as prescribed by this section may be assessed against an applicant for a permit or approval if the applicant has also filed an application for a certificate of environmental compatibility or public need pursuant to the Montana Major Facility Siting Act (Title 70, chapter 8, R.C.M. 1947), and the appropriation or use of water involved in the application(s) for permit or approval has been or will be studied by the department pursuant to that act.

(6) This act shall apply to all applications, pending or hereinafter filed, for which the department has not, as of the effective date of this act, commenced writing an environmental impact statement. This act shall

not apply to any application the fee for which would not exceed two thousand five hundred dollars ($2,500).

(7) Failure to submit the fee as required by this section shall void the application(s).

(8) The department may, in its discretion, rely upon the environmental studies, investigations, reports, and assessments made by any other state agency or any person, including any applicant, in the preparation of its environmental impact statement.

History: En. 89-8-102.2 by Sec. 1, Ch. 356, L. 1975; amd. Sec. 1, Ch. 117, L. 1977.

Title of Act

An act to provide for assessment of fees for the preparation of environmental impact statements upon certain applications for water right permits or approvals; and providing for an immediate effective date.

Amendments

The 1977 amendment deleted "subsection (2) of" before "this section" at the end of the first sentence of subsection (1); substituted "as herein provided" for "according to the declining scale as follows" at the end of the first sentence of subsection (2); inserted "The maximum fee that shall be paid to the department may not exceed the fees set forth in the following declining scale" at the beginning of the second sentence of subsection (2); inserted subsections (3) and (4); redesignated former subsections (3) through (5) as subsections (5) through (7); substituted "Montana Major Facility Siting Act" for "Montana Utility Siting Act" in subsection (5); added subsection (8); and made a minor change in phraseology.

Effective Date

Section 2 of Ch. 356, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 9, 1975.

89-8-103. Statement of legislative findings and policy. The legislature, noting that appropriations have been claimed, that applications have been filed for, and that there is further widespread interest in making substantial appropriations of water in the Yellowstone River Basin, finds that these appropriations threaten the depletion of Montana's water resources to the significant detriment of existing and projected agricultural, municipal, recreational and other uses, and of wildlife and aquatic habitat. The legislature further finds that these appropriations foreclose the options to the people of this state to utilize water for other future beneficial purposes, including municipal water supplies, irrigation systems, and minimum flows for the protection of existing rights and aquatic life. The legislature pursuant to its mandate and authority under article IX of the Montana constitution, declares that it is the policy of this state that before these proposed appropriations are acted upon existing rights to water in the Yellowstone basin must be accurately determined for their protection, and that reservations of water within the basin must be established as rapidly as possible for the preservation and protection of existing and future beneficial uses.

History: En. 89-8-103 by Sec. 1, Ch. 116, L. 1974.

Title of Act

An act providing for the suspension of action on certain applications for permits to appropriate surface water or for changes in purpose of use in the Yellowstone River Basin for three (3) years or until existing rights have been determined, whichever occurs first; making reservations established under the Montana Water Use Act preferred uses over such permits; and providing for an immediate effective date.

89-8-104. Definitions. Unless the context clearly requires otherwise, in this act:

(1) "Department" means the department of natural resources and conservation.

(2) "Basin" means the Yellowstone River Basin.

(3) "Application" means an application for a permit under the Montana Water Use Act to appropriate surface water from any source of supply within the basin for either or both of the following purposes:

(a) a reservoir with a total planned capacity of fourteen thousand (14,000) acre feet or more, or

(b) for a flow rate greater than twenty (20) cubic feet of water per second.

The term also includes an application for approval under section 89-892, R. C. M. 1947, to change the purpose of use.

(4) "Reservation" means a reservation of water provided for by section 89-890 of the Montana Water Use Act.

History: En. 89-8-104 by Sec. 2, Ch. 116, L. 1974.

89-8-105. Suspension of action. (1) The department may not grant or otherwise take any action on an application until one of the following first occurs:

(a) the board of natural resources and conservation makes a final determination on the applications for reservations of water in the basin filed before January 1, 1977, in accordance with 89-890;

(b) a final determination of existing rights has been made in the source of supply in accordance with the Montana Water Use Act; or

(c) January 1, 1978; however, if a court stays or enjoins the continuance of proceedings on any pending application for reservation of water in the basin filed before January 1, 1977, and such stay or injunction prevents the board from making a final determination on such application before January 1, 1978, the court shall extend this date by the length of delay incurred. The court may not extend this date beyond January 15, 1979.

(2) A reservation established before such application for permit is granted is a preferred use over the right to appropriate water pursuant to the permit, and the permit, if granted, shall be issued subject to that preferred use.

History: En. 89-8-105 by Sec. 3, Ch. 116, L. 1974; amd. Sec. 1, Ch. 26, L. 1977.

Amendments

The 1977 amendment substituted subdivision (1)(a) for "three (3) years have elapsed from the effective date of this act, or"; inserted subdivision (1)(c); and made minor changes in phraseology and punctuation.

Effective Date

Section 2 of Ch. 26, Laws 1977 provided the act should be effective on its passage and approval. Approved March 9, 1977.

89-8-106. When department may suspend action. The department may suspend action on applications not meeting the definition of application in section 2 [89-8-104] of this act if it determines, after a public hearing conducted under the contested case procedures of the Montana Administrative Procedure Act, that the cumulative impact of those applications,

if granted, would be contrary to the policies and purposes of this act. If the department suspends action on such applications, the provisions of section 3 [89-8-105] of this act apply.

History: En. 89-8-106 by Sec. 4, Ch. 116, L. 1974.

89-8-107. Reservations. The department may apply for reservations and shall, as rapidly as possible, assist other appropriate state agencies and political subdivisions in applying for reservations within the basin. The United States or any agency thereof may apply for reservation of water in the basin under section 89-890, R.C.M. 1947, for beneficial use of that water in the State of Montana. Particular emphasis shall be given to applications to reserve water for agricultural, municipal, and minimum flow purposes for the protection of existing rights and aquatic life.

History: En. 89-8-107 by Sec. 5, Ch. 116, L. 1974; amd. Sec. 10, Ch. 416, L. 1977.

Amendments

The 1977 amendment deleted "not" before "apply" in the second sentence; substituted "for beneficial use of that water in the State of Montana" at the end of the second sentence for "until the requirements of section 3 of this act are met"; and made a minor change in phraseology.

89-8-108. Application of act. This act applies to applications currently pending with the department, as well as applications filed with the department after the effective date of this act.

History: En. 89-8-108 by Sec. 6, Ch. 116, L. 1974.

89-8-109. Utility facilities. This act does not apply to applications to appropriate water for use by a utility facility for which a certificate of environmental compatibility and public need is granted pursuant to the Montana Utility Siting Act of 1973.

History: En. 89-8-109 by Sec. 7, Ch. 116, L. 1974.

89-8-110. Certain changes of use allowed. Notwithstanding any provision of this act, the department may approve a change of purpose of use to agricultural, irrigation, domestic and municipal uses if it determines that the change is not contrary to the policies and purposes of this act.

History: En. 89-8-110 by Sec. 8, Ch. 116, L. 1974.

89-8-111. Severability. If a part of this [act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 89-8-111 by Sec. 9, Ch. 116, L. 1974.

Compiler's Notes

The compiler has inserted the bracketed word "act" in the first line, to correct an apparently unintentional omission.

Effective Date

Section 10 of Ch. 116, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

CHAPTER 9—YELLOWSTONE RIVER COMPACT—RATIFICATION OF

Section 89-906. Definitions.
89-907. Filing written statement with department.
89-908. Duty to install weir or other measuring device.
89-909. Duty to measure water.
89-911. Domestic and stock uses exempted.
89-912. Board of natural resources and conservation to make rules and regulations.
89-914. Department to make record available.
89-915. County attorneys to perform certain services.
89-916. Penalty.

89-906. Definitions. Unless the context requires otherwise, in this act:

(a) The term "person" means any person, corporation, partnership, association, municipal corporation, agency and all others authorized by the laws of the state to appropriate water for beneficial uses.

(b) The term "interstate tributaries" or "interstate tributary" means the following described rivers which contribute to the flow of the Yellowstone river in the state of Montana, including all tributaries thereof: the Clark Fork of the Yellowstone river; the Big Horn river (except the Little Big Horn river); the Tongue river; and the Powder river, whose confluences with the Yellowstone river are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

(c) The term "domestic use" means the use of water by an individual, or by a family unit or household for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

(d) The term "stock water use" means the use of water for livestock and poultry.

(e) The term "divert" and "diversion" means the taking or removing of water from any interstate tributary or any tributary thereof, when the water so taken or removed is not returned directly into the channel of the interstate tributary or of the tributary thereof from which it is taken.

(f) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

History: En. Sec. 2, Ch. 92, L. 1953; amd. Sec. 156, Ch. 253, L. 1974.

Amendments

The 1974 amendment rewrote the introductory clause which read: "As used in this act, the following terms shall have the following meaning"; deleted a second sentence in subdivision (a) which read: "Where the singular is used it shall be construed to include the plural"; added subdivision (f); and made minor changes in phraseology.

89-907. Filing written statement with department. (1) Any person claiming an appropriative right to the use of any water of any interstate tributary which right was acquired after January 1, 1950, shall, within 60 days after February 25, 1953, or before he diverts any water, file with the department at its office in Helena, Montana, a written statement containing the following information:

(a) the name of the claimant and his address;

(b) date of appropriation or the date when the water was first applied to a beneficial use;

(c) the quantity of water claimed;

(d) the name of the stream, river, or other source of water from which the diversion is made, if it has a name, and if it does not, a description identifying the same;

(e) the purpose for which the water is claimed and the place of intended use;

(f) the means of diversion;

(g) whether or not a weir or other device for measuring the water intended to be diverted has been installed in his ditch or other means of diversion;

(h) if a notice of appropriation was filed with the county clerk and recorder, the name of the county where it was filed;

(i) whether the appropriation was made from an adjudicated or non-adjudicated stream, river, or other source of water.

(2) The written statement shall be verified by the affidavit of the claimant or someone in his behalf, which affidavit must state that the matters and facts contained in the written statement are true.

History: En. Sec. 3, Ch. 92, L. 1953; amd. Sec. 10, Ch. 280, L. 1965; amd. Sec. 157, Ch. 253, L. 1974; amd. Sec. 11, Ch. 460, L. 1977.

Amendments

The 1965 amendment substituted "state water conservation board" for "state engineer" in the first paragraph; and made a minor change in phraseology.

The 1974 amendment inserted the subsection designations (1) and (2); and substituted "department" for "state water conservation board" in subsection (1).

The 1977 amendment deleted "as provided by section 89-810" after "recorder" in subdivision (1)(h); and made minor changes in phraseology, punctuation and style.

89-908. Duty to install weir or other measuring device. Any person claiming an appropriative right to use any waters of any interstate tributary of the Yellowstone river which right was acquired subsequently to January 1, 1950, shall, after the approval of this act and before he diverts any such water, install in his ditch, or other means of diversion, a weir or other measuring device so that all of the water to be diverted by him can be accurately measured. The installation of a weir or other measuring device is subject to the approval of the department, and if in its judgment such weir or other measuring device, or the installation of the same, is defective so that the water cannot be accurately measured, it may order the installation of an accurate measuring device and the claimant shall not divert any water until he complies with such order.

History: En. Sec. 4, Ch. 92, L. 1953; amd. Sec. 11, Ch. 280, L. 1965; amd. Sec. 158, Ch. 253, L. 1974.

Amendments

The 1965 amendment substituted "state water conservation board" for "state engineer" in the second sentence; and made minor changes in phraseology.

The 1974 amendment substituted "department" for "state water conservation board."

89-909. Duty to measure water. Each claimant shall measure all the water being diverted by him and keep accurate records thereof on forms

prescribed and furnished by the department, and within fifteen (15) days after the first day of November of each year file the written records with the department at its office in Helena, Montana.

History: En. Sec. 5, Ch. 92, L. 1953; amd. Sec. 12, Ch. 280, L. 1965; amd. Sec. 159, Ch. 253, L. 1974.

Amendments

The 1965 amendment substituted "state water conservation board" for "state engineer" in two places; and made a minor change in phraseology.

The 1974 amendment substituted "Each claimant shall measure" for "It shall be the duty of every said claimant to measure"; substituted "department" for "state water conservation board" in two instances; and made minor changes in phraseology.

89-911. Domestic and stock uses exempted. Any appropriation of water from any interstate tributary of the Yellowstone River made for domestic or stock water uses will not come within the provisions of this chapter whenever the capacity of a reservoir for stock water does not exceed 20 acre-feet.

History: En. Sec. 7, Ch. 92, L. 1953; amd. Sec. 12, Ch. 460, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology and style.

89-912. Board of natural resources and conservation to make rules and regulations. The board of natural resources and conservation shall adopt and the department shall enforce reasonable rules consistent with this act and the Yellowstone River Compact.

History: En. Sec. 8, Ch. 92, L. 1953; amd. Sec. 13, Ch. 280, L. 1965; amd. Sec. 160, Ch. 253, L. 1974.

Amendments

The 1965 amendment substituted "state water conservation board" for "state engineer."

The 1974 amendment rewrote this section which read: "The state water conservation board shall prescribe and enforce reasonable rules and regulations consistent with this act and the Yellowstone River Compact."

89-914. Department to make record available. The department shall furnish and make available to the Yellowstone river compact commission, from the records filed in its office, all appropriative rights to the use of the waters of the interstate tributaries of the Yellowstone river in the state of Montana, acquired after January 1, 1950, the amount of the annual diversions from those interstate tributaries and any other information that its records may disclose as may be required by the Yellowstone river compact commission.

History: En. Sec. 10, Ch. 92, L. 1953; amd. Sec. 14, Ch. 280, L. 1965; amd. Sec. 161, Ch. 253, L. 1974.

Amendments

The 1965 amendment substituted "state water conservation board" for "state engineer"; and made minor changes in phraseology.

The 1974 amendment substituted "department" for "state engineer"; and made a minor change in phraseology.

89-915. County attorneys to perform certain services. The county attorneys of the state shall perform such legal services and bring such proceedings in carrying out the purposes of this act within their respective counties as the department shall require.

History: En. Sec. 11, Ch. 92, L. 1953; amd. Sec. 162, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state engineer."

89-916. Penalty. Any person who violates or refuses or neglects to comply with any provision of this act, or any order or rule adopted by the board or department pursuant thereto or the Yellowstone River Compact, is guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars ($25) nor more than two hundred dollars ($200) for each offense.

History: En. Sec. 12, Ch. 92, L, 1953; amd. Sec. 163, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "order or rule adopted by the board or department" for "order, rule or regulation promulgated by the state engineer"; and made minor changes in phraseology and style.

CHAPTER 10—WATER COMMISSIONERS—DETERMINATION OF JOINT RIGHTS

Section 89-1001. Appointment of water commissioners—authority—compensation.
89-1015. Complaint by dissatisfied user.

89-1001. (7136) Appointment of water commissioners—authority—compensation. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least fifteen per cent (15%) of the water rights affected by the decree, in the exercise of his discretion, to appoint one or more commissioners, who shall have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates and permits issued under the Montana Water Use Act provided that when petitioners make proper showing that they are not able to obtain the application of the owners of at least fifteen per cent (15%) of the water rights affected, and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in his discretion, appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a final decree issued under the Montana Water Use Act, the judge of the district court which issued the final decree shall upon application by the department of natural resources and conservation appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department, or any other owner of stored waters may petition the court to have such stored waters distributed by the water commissioners appointed by said

court. The court may thereupon make an order requiring the commissioner or commissioners appointed by the court to distribute such stored water when and as released to water users entitled to the use thereof.

(4) Upon the issuance of such order the water commissioner or commissioners shall have authority and it is hereby made his or their duty to admeasure and distribute to the users thereof as their interests may appear and be required, the stored and supplemental waters stored and as released by the department of natural resources and conservation under provisions of the state Water Conservation Act, chapter 1 of this title, to be diverted into and through said streams, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules and regulations as decreed water rights are admeasured and distributed, and such water commissioner or commissioners and the owners and users of such stored and supplemental waters shall be bound by and be subject to the provisions of this chapter, and all acts amendatory thereof and supplemental thereto, provided that the admeasurements and distribution of such stored and supplemental waters shall in no way interfere with decreed water rights. The purpose of this act is to provide a uniform, equitable and economical distribution of adjudicated, stored and supplemental waters.

(5) At the time of the appointment of such water commissioner or commissioners the district court shall fix their compensation, and the owners and users of the distributed waters shall pay their proportionate share of such fees and compensation.

(6) Upon the application of the board or boards of one (1) or more irrigation districts entitled to the use of water stored in a reservoir which is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district wherein the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute such stored water to said irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. His compensation is set by the appointing judge and paid by the requesting district or districts; in all other matters the provisions of this chapter apply so long as they are consistent with this subsection.

History: Earlier acts relating to water commissioners were Secs. 1 to 3, pp. 136 and 137, Laws of 1899, and chapter 64, Laws of 1905. These acts appeared as sections 4881 to 4889, Revised Codes 1907, and were repealed by chapter 43. Laws of 1911. This section en. Sec. 1, Ch. 43, L. 1911; re-en. Sec. 7136, R. C. M. 1921; amd. Sec. 1, Ch. 125, L. 1925; amd. Sec. 1, Ch. 187, L. 1939; amd. Sec. 1, Ch. 231, L. 1963; amd. Sec. 39, Ch. 452, L. 1973; amd. Sec. 1, Ch. 51, L. 1975.

Amendments

The 1973 amendment substituted "parties owning water rights in the source affected by the decree" for "parties bound by the decree or decrees" in the middle of subsection (1); inserted "and by any certificates and permits issued under the Montana Water Use Act" immediately before the proviso to subsection (1); inserted subsection (2); renumbered former subsections (2), (3) and (4) as (3), (4) and (5); substituted references to the department of natural resources and conservation for references to the state water conservation board throughout the section; substituted "the distributed waters" for "decreed, stored and supplemental waters" near the end of subsection (5); and made minor changes in phraseology.

The 1975 amendment added subsection (6).

References

Allen v. Wampler, 143 M 486, 392 P 2d 82.

89-1015. (7150) Complaint by dissatisfied user. A person owning or using any of the waters of the stream or ditch or extension of the ditch who is dissatisfied with the method of distribution of the waters of the stream or ditch by the water commissioner or water commissioners and who claims to be entitled to more water than he is receiving or to a right prior to that allowed him by the water commissioner or water commissioners may file his written complaint, duly verified, setting forth the facts of the claim. Thereupon the judge shall fix a time for the hearing of such petition and shall direct that such notice be given to the parties interested in the hearing as the judge considers necessary. At the time fixed for the hearing, the judge must hear and examine the complainant and other parties as may appear to support or resist such claim and examine the water commissioner or water commissioners and witnesses as to the charges contained in the complaint. Upon the determination of the hearing, the judge shall make such findings and order as he considers just and proper. If it appears to the judge that the water commissioner or water commissioners have not properly distributed the water according to the provisions of the decree, the judge shall give the proper instructions for such distribution. The judge may remove any water commissioner and appoint some other person in his stead if he considers that the interests of the parties in the waters mentioned in the decree will be best subserved thereby, and if it appears to the judge that the water commissioner has willfully failed to perform his duties, he may be proceeded against for contempt of court, as provided in contempt cases. The judge shall make such order as to the payment of costs of the hearing as appears to him to be just and proper.

History: En. Sec. 15, Ch. 43, L. 1911; re-en. Sec. 7150, R. C. M. 1921; amd. Sec. 5, Ch. 125, L. 1925; amd. Sec. 13, Ch. 460, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology and punctuation.

Counterclaim Denied

Counterclaim against petition of irrigation district for additional appropriation of water was properly denied, where evidence was uncontradicted that water was going to waste and that impoundment would be beneficial. Sunset Irrigation District v. Ailport, — M —, 531 P 2d 1349.

Purpose of Summary Proceeding

The district court had no authority in a proceeding under this section to approve a method of distribution which changed the point of diversion of water to a tract and changed the transportation ditch thereto, as the only function of the court in such a proceeding is to determine whether the water involved is being allocated in compliance with existing decrees and not to decree new water rights. Allen v. Wampler, 143 M 486, 392 P 2d 82.

CHAPTER 11—WATER USERS' ASSOCIATIONS ORGANIZED UNDER FEDERAL LAW

Section 89-1107. Operation of projects with water users' association.

89-1107. Operation of projects with water users' association. (1) As used in this section, "department" means the department of natural re-

sources and conservation provided for in Title 82A, chapter 15 and "association" means a water users' association.

(2) Whenever the department proposes a program of maintenance, repair, operation, or alteration of a project in excess of $25,000, the cost of which will be borne by an association pursuant to the terms of a water marketing contract, the association shall be informed of the program and given an opportunity to comment. The department shall notify the association of its decision. If the association believes the program to be unnecessary or excessive in cost, it may appeal the department decision to the board of natural resources and conservation as provided for in 89-115(4). The board shall notify the association of its decision. If the board's decision is adverse to the association, the association may file within 30 days of receipt of notice of the board's decision a complaint to review the board's decision in the district court in any county where all or part of the project works are located or in Lewis and Clark County.

(3) If a complaint is filed under subsection (2), the court shall hold a trial de novo on the question of necessity of the department program and the question of excessive costs. If the association prevails, the court may award costs to the association. The court may specify an acceptable program of maintenance, repair, operation, or alteration or may order the department and the association to develop a program, subject to court approval.

(4) Whenever a program of maintenance, repair, operation, or alteration is proposed, the department shall assist the association in attempting to secure sources of financing, including federal funds.

(5) Whenever the department proposes to abandon a project which involves an association, the department shall notify the association. If, within 30 days of receipt of the notice of abandonment, stockholders of the association representing 15% or more of the issued and outstanding stock of the association file a petition of protest with the department, the project may not be abandoned without the consent of the legislature.

History: En. Sec. 1, Ch. 253, L. 1977.

Title of Act

An act to enable water users' associations to have input into and appeal from decisions of the department of natural resources and conservation relating to repair and maintenance in excess of $25,000 on water projects involving an association and to require legislative approval for abandonment of projects whenever there is sufficient protest by an association.

CHAPTER 12—IRRIGATION DISTRICTS—ORGANIZATION

Section 89-1201. Creation of irrigation districts—percentage of titleholders required—what constitutes evidence of title—report of department of natural resources and conservation—payment of expenses.
89-1202. Petition for organization.
89-1204. Hearing on petition and appointment of commissioners.
89-1205. Qualifications of commissioners and term of office.
89-1208. Compensation and expenses of commissioners.
89-1215. Records required to be kept—examination by department of community affairs.
89-1220. Purpose.

89-1201. (7166) **Creation of irrigation districts—percentage of titleholders required—what constitutes evidence of title—report of department**

of natural resources and conservation—payment of expenses. (1) Sixty per centum in number of the holders of title or evidence of title to lands sought to be included in an irrigation district and which are susceptible of irrigation, such holders of title or evidence of title also representing sixty per centum of the acreage of said lands, may propose the establishment and organization of an irrigation district under the provisions of this act; provided, however, that when any of such land sought to be included in such irrigation district is covered by mortgage or other lien then the owner or owners of such land shall first procure the written consent of the holder of such mortgage or other lien before proposing the establishment and organization of such irrigation district. Irrigation districts may be formed in order to co-operate with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of Congress which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of constructed works, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands. When so organized, such district shall have the powers conferred or that may hereafter be conferred, by law upon such irrigation district, provided, however, that in all irrigation districts organized in connection with United States reclamation projects a majority of the holders of title or evidence of title to lands sought to be included in such irrigation district under the provisions of the act, may propose the establishment and organization of such district.

(2) The certificate of the county clerk and recorder, or the certificate of the department of state lands, shall be sufficient evidence of title for the purpose of this act. Where lands have been purchased from the state and part or all of the purchase money has been paid, but the patents or deeds from the state to such lands have not been issued, the receipt or receipts held by the purchasers, or the certificate of the department of state lands showing the payments on account of purchase, shall be evidence of title to such lands under this act.

(3) Before any such district shall be established, there shall be presented to the district court at the hearing on the petition for such establishment, a written report or opinion from the department of natural resources and conservation on the engineering features involved and the possibilities of water supplies accompanied by a copy of the decree of the district court showing the adjudicated water rights in said streams from which said waters are to be diverted. For this purpose, a copy of the petition provided for in section 89-1202 and of all maps and other papers filed with the same, shall be filed with the department at the time the original petition is filed with the clerk of the district court. The expense, if any, incurred by the department in the investigation and report upon the proposed district shall be certified, with the report, and that the department shall, within a period of one hundred twenty days from the filing of said petition with the department, render its report, as herein provided, to the said district court, and shall be assessed as costs in said hearing, which costs shall be paid by the district in event of its establishment and in event

such petition be denied, then such costs shall be paid by the petitioners; provided, however, that such report or opinion shall be not requested or obtained, and shall not be necessary, whenever it is proposed to co-operate with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of Congress which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation or maintenance of constructed works, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district laws.

History: The first irrigation district act was Ch. 70, L. 1907, appearing as Secs. 2309-2402, Rev. C. 1907; repealed by Ch. 146, L. 1909.

This section en. Sec. 1, Ch. 146, L. 1909; amd. Sec. 1, Ch. 153, L. 1917; amd. Sec. 1, Ch. 116, L. 1919; re-en. Sec. 7166, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1923; amd. Sec. 1, Ch. 112, L. 1925; amd. Sec. 15, Ch. 280, L. 1965; amd. Sec. 164, Ch. 253, L. 1974.

Amendments

The 1965 amendment substituted "the state water conservation board" or "said board" for "the state engineer" or "said engineer" in five places in subsection (3); deleted "(other than his salary)" which followed "incurred by the state engineer" near the beginning of the third sentence of subsection (3); and made other minor changes in phraseology in subsection (3).

The 1974 amendment substituted "department of state lands" for "register of the state land office" in two instances in subsection (2); substituted references to the "department of natural resources and conservation" for references to "state water conservation board" in subsection (3); and made a minor change in phraseology.

89-1202. (7167) **Petition for organization.** (1) For the purpose of establishing and organizing an irrigation district hereunder, a petition signed by the required number of holders of title or evidence of title to lands within the proposed district mentioned in the preceding section shall be filed with the clerk of the district court of the county in which the greatest portion of the lands of the proposed district are located. The petition shall set forth:

(a) the name suggested for the proposed district;

(b) a general description of the lands to be included in the proposed district;

(c) the names of the holders of title or evidence of title to the lands in the proposed district, ascertained in the manner mentioned in the preceding section, and if a holder is a nonresident of the county or counties in which the proposed district lies, the post-office address of the nonresident owner, if known;

(d) generally, the source from which the lands in the proposed district are to be irrigated and the character of the works, water rights, canals, and other property proposed to be acquired or constructed for irrigation purposes in the proposed district;

(e) a prayer that the lands embraced within the proposed district be organized as an irrigation district according to the applicable provisions of chapters 12 through 21 of Title 89.

(2) The petition shall be accompanied by:

(a) a map or plat of the proposed district; and

(b) a good and sufficient bond or undertaking, to be approved by the district court or judge thereof of the county in which the petition is required to be filed under the provisions of subsection (1), to pay all costs in and about the proceedings preliminary to the organization of the district in the event that the organization is not effected.

(3) Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands does not render invalid any proceedings hereunder or deprive the district court of jurisdiction of the subject matter. Such misdescribed lands or misnamed persons may not be included in the district.

History: En. Sec. 2, Ch. 146, L. 1909; re-en. Sec. 7167, R. C. M. 1921; amd. Sec. 14, Ch. 460, L. 1977.

Amendments

The 1977 amendment deleted a proviso at the end of the first sentence of subsection (1); substituted "applicable provisions of chapters 12 through 21 of Title 89" at the end of subsection (1)(e) for "provisions of this act"; substituted "subsection (1)" in subdivision (2)(b) for "this act"; and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

89-1204. (7169) **Hearing on petition and appointment of commissioners.** (1) At the time specified in the notice mentioned in the preceding section, the district court in which the petition is filed shall hear the petition but may adjourn such hearing from time to time, not exceeding 3 weeks in all, and may continue the hearing for want of sufficient notice or other good cause. The court, upon application of the petitioners or any interested person or persons, shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing all interested persons whose lands or rights may be damaged or benefited by the organization of the district or by the irrigation works or improvements therein or to be acquired or constructed may appear and contest the necessity or utility of the proposed district or any part thereof, and the contestants and petitioners may offer any competent evidence in regard thereto.

(2) The court shall hear and determine whether the requirements of 89-1201, 89-1202, and 89-1203 have been complied with and for that purpose shall hear all competent and relevant testimony that may be offered.

(3) (a) The court may make such changes in the proposed district as may be considered advisable or as fact, right, and justice may require. Land which is susceptible of irrigation from the same general source and by the same general system of works applicable to the other lands of the proposed district may not be excluded from the proposed district if the owner or owners of the lands file in the district court a written request that the lands be included.

(b) Lands which will not, in the judgment of the court, be benefited by irrigation from the works of the proposed district; which are already under irrigation; which have appurtenant water rights; or which can be irrigated from sources more feasible than the proposed district may not be included in the district unless the owner of such lands consents in writing to the inclusion.

(c) Notwithstanding the provisions of subsection (3)(b), whenever a district is formed to cooperate with the United States, lands previously irrigated and having appurtenant water rights may be included within the district boundaries if it appears to the court that the lands will be benefited by inclusion.

(d) All lands having appurtenant water rights, served by an irrigation works system supplying more than 10,000 acres, may, in the discretion of the court, be included in the proposed district upon petition by at least a majority, both in number and acreage, of the holders of title or evidence of title to the lands served by the irrigation system and having appurtenant water rights.

(e) Lands of the district need not be contiguous. The location of a particular tract in the proposed district is not a bar to exclusion.

(4) For purposes of including or excluding land from a proposed district, the court may subdivide any tract into 40-acre or smaller parcels.

(5) If, on final hearing, it is found by the court that the petition does not substantially comply with the requirements of this act or that the facts stated are not sustained by the evidence, the court shall dismiss the petition at the cost of the petitioners and make and enter an order to that effect. If it is found that the petition substantially complies with the requirements and that the facts stated are sustained by the evidence, the court shall make and enter an order:

(a) setting forth findings and allowing the petition;

(b) establishing the proposed district;

(c) giving accurate descriptions of the lands included within the proposed district;

(d) dividing the proposed district into three, five, or seven divisions, as may be advisable in view of the size of the district;

(e) appointing as commissioner one competent person for each division of the district, having the qualifications as provided by 89-1205.

(6) The finding and order are conclusive upon all the owners of lands within the district that they have assented to and accepted the applicable provisions of chapters 12 through 21 of Title 89 and are final unless appealed from to the supreme court within 60 days from the day of entry of the order. A copy of the order, duly certified to by the clerk of the district court, shall be filed for record within 30 days after the order is made and entered with the county clerk and recorder of the county where the lands included within the district are situated. Lands not situated in the county in which the copy is filed shall be omitted from the copy.

(7) Every irrigation district so established is a public corporation for the promotion of the public welfare, and the lands included therein shall constitute all the taxable and assessable property of such district for the purposes of chapters 12 through 21 of Title 89.

History: En. Sec. 4, Ch. 146, L. 1909; amd. Sec. 2, Ch. 153, L. 1917; amd. Sec. 2, Ch. 116, L. 1919; re-en. Sec. 7169, R. C. M. 1921; amd. Sec. 15, Ch. 460, L. 1977.

Amendments

The 1977 amendment substituted "chapters 12 through 21 of Title 89" in subsections (6) and (7) for "this act"; and

made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

89-1205. (7170) **Qualifications of commissioners and term of office.** (1) No person may be a commissioner unless he is an owner of land within the district and is a resident of the county in which the division of the district or some portion thereof, for which the commissioner is elected, is situated.

(2) The commissioners appointed shall hold their respective offices until the second Saturday in April following their appointment and until their respective successors are elected and qualified. Each of the commissioners shall qualify in the same manner as justices of the peace. The bond for a commissioner shall be approved by the district court or judge thereof and filed in the office of the clerk of the court. In case any district established under this chapter is appointed fiscal agent of the United States or is authorized by the United States to make collections of moneys for and on behalf of the United States in connection with any federal reclamation project, each commissioner shall execute a further and additional official bond in such sum as the secretary of the interior may require, conditioned for the faithful discharge of the duties of his office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization, and any such bond may be sued upon by the United States or by any person injured by the failure of the commissioner or the district to fully, promptly, and completely perform their respective duties.

History: En. Sec. 5, Ch. 146, L. 1909; amd. Sec. 1, Ch. 145, L. 1915; re-en. Sec. 7170, R. C. M. 1921; amd. Sec. 16, Ch. 460, L. 1977.

Amendments

The 1977 amendment deleted requirements that the commissioners' bonds be for $2,000, for faithful performance and payable to to the state for benefit of the district from the third sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

89-1208. (7173) **Compensation and expenses of commissioners.** (1) The commissioners, when sitting as a board or when engaged in the business of the district, shall each receive an amount not to exceed $20 a day for services and, in addition thereto, their necessary expenses in attending meetings or when otherwise engaged on district business, including premiums on qualifying bonds and any other bonds required of them in connection with their office, provided such expenses and per diem are approved by a unanimous vote of the board, and a mileage allowance of 12 cents a mile in attending board meetings or when engaged in the business of the irrigation district.

(2) No commissioner or any other officer named in this act may in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board or in the profits derived therefrom. For any violation of this provision, such officer is guilty of a misdemeanor and his conviction thereof shall work forfeiture of his office and he shall be punished as provided in 94-7-401.

(3) The commissioners of an irrigation district shall each furnish a bond in the penal sum of $2,500, with corporate surety conditioned for the faithful performance of their duties under this act. The secretary shall furnish bond, with corporate surety, in the sum of $1,000, conditioned for the faithful performance of his duties pursuant to this act and for the proper safekeeping of the records and documents of the district, in all cases where the obligations of the district, either existing or proposed, total $250,000 or over. In all other cases the bond for the commissioners shall be in the sum of $1,000.

History: En. Sec. 8, Ch. 146, L. 1909; amd. Sec. 1, Ch. 120, L. 1921; re-en. Sec. 7173, R. C. M. 1921; amd. Sec. 3, Ch. 157, L. 1923; amd. Sec. 1, Ch. 116, L. 1927; amd. Sec. 1, Ch. 15, L. 1929; amd. Sec. 1, Ch. 62, L. 1965; amd. Sec. 1, Ch. 153, L. 1973; amd. Sec. 17, Ch. 460, L. 1977.

Amendments

The 1965 amendment increased the daily compensation of the commissioners set forth in the first paragraph from $5 to $10.

The 1973 amendment increased the compensation of commissioners from $10 to $20 per day; and added the provision for a mileage allowance at the end of the first paragraph.

The 1977 amendment inserted the subsection designations; substituted punishment "as provided in 94-7-401" at the end of subsection (2) for a fine not exceeding $500 or imprisonment in the county jail not exceeding 6 months or both; and made minor changes in phraseology, punctuation and style.

89-1215. **Records required to be kept—examination by department of community affairs.** It shall be the duty of the board of control to keep, or cause to be kept, a full and complete book and record of the accounts, records, contracts, securities, minutes of meetings and other matters of every kind pertaining to or belonging to the joint operation of the irrigation districts, in the form prescribed by the department of community affairs.

It is hereby made the duty of the department of community affairs to prescribe such forms for the use of the board of control, and to examine the same as provided by law for the examination of the affairs of county offices.

History: En. Sec. 7, Ch. 179, L. 1959; amd. Sec. 165, Ch. 253, L. 1974; amd. Sec. 51, Ch. 213, L. 1975.

Amendments

The 1974 amendment substituted "department of intergovernmental relations" for "state examiner" in the caption and in two places in the text of the section.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" throughout the section.

89-1220. **Purpose.** This act is not intended to conflict in any way with statutes governing irrigation districts but is for the sole purpose of making it possible for one or more irrigation districts to function jointly through a central control agency for the purpose of efficiency, simplicity, and economy.

History: En. Sec. 12, Ch. 179, L. 1959; amd. Sec. 18, Ch. 460, L. 1977.

Amendments

The 1977 amendment deleted "present" before "statutes"; and made minor changes in punctuation.

CHAPTER 13—IRRIGATION DISTRICTS—BOARD OF COMMISSIONERS, POWERS, DUTIES AND ELECTIONS

Section 89-1301. Powers and duties of commissioners.
89-1303. First election of commissioners—regular election—term of office.
89-1311. Qualification of electors and nature of voting rights, how determined.
89-1319. Application of act.
89-1320. Petition, hearing, and order.
89-1322. Duty of trustees, levy, and indebtedness.

89-1301. (7174) **Powers and duties of commissioners.** The board of commissioners of every irrigation district established and organized under and by virtue of this act shall constitute the corporate authority of said district.

(1) to (4) * * * [Same as parent volume.]

(5) But no purchase, lease or contract for purchase of any water, or water rights, or canals, or reservoirs, or reservoir sites, or dam sites, or irrigation works or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates and specifications, or for the purchase of machinery for pumping plants, or the erection of buildings, aqueducts and other structures necessarily used in connection with such pumping plants, for a price or rental in excess of eighty thousand dollars ($80,000), shall be final or binding upon the district, nor shall said sum be paid without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district. Any splitting or division of such purchase, lease or contract with the purpose or intention of avoiding or circumventing the provisions of this section shall render such divided or split contract or contracts absolutely null and void.

(6) to (13) * * * [Same as parent volume.]

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R. C. M. 1921; amd. Sec. 4, Ch. 157, L. 1923; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975.

Amendments

The 1973 amendment increased the amount specified in subdivision (5) from $10,000 to $25,000.

The 1975 amendment increased the amount specified in subdivision (5) from $25,000 to $80,000.

89-1303. (7176) **First election of commissioners—regular election—term of office.** The regular election for commissioners in each district shall be held annually on the first Tuesday in April of each year; and within 40 days following their election the commissioners shall meet and organize as a board by electing a president from their number and a secretary, who may or may not be a commissioner, and who shall each hold office during the pleasure of the board. The term of office of each commissioner shall begin on the date of the organizational meeting after the regular election and shall continue for three years and until the election and qualification of his successor. Commissioners are elected by the electors of the entire district. At the regular election for commissioners held in April, 1921, there shall be elected one commissioner for the first division of each district who shall hold his office for the term of one year, one commissioner for the second division of each district who shall hold his office for the term of two years, and one commissioner for the third

division of each district who shall hold his office for the term of three years; and if there be five divisions in a district one commissioner shall be elected for the fourth division who shall hold his office for two years, and one commissioner shall be elected for the fifth division who shall hold his office for three years; and if there be seven divisions in a district one commissioner shall be elected for the sixth division who shall hold his office for two years, and one commissioner shall be elected for the seventh division who shall hold his office for three years; provided, however, that this act shall not be construed to extend the term of any commissioner heretofore elected or appointed in any district.

History: En. Sec. 11, Ch. 146, L. 1909; amd. Sec. 4, Ch. 153, L. 1917; amd. Sec. 1, Ch. 3, L. 1921; amd. Sec. 1, Ch. 7, Ex. L. 1921; re-en. Sec. 7176, R. C. M. 1921; amd. Sec. 1, Ch. 302, L. 1977.

Amendments

The 1977 amendment changed the date of election from the first Saturday in April to the first Tuesday in April; substituted "within 40 days" in the first sentence for "on the third Saturday in April"; and substituted "on the date of the organizational meeting" in the second sentence for "on the third Saturday in April."

89-1311. (7184) Qualification of electors and nature of voting rights, how determined. (1) At all elections held under the provisions of this act, except as otherwise expressly provided, the following holders of title or evidence of title to lands within the district, herein designated electors, are entitled to vote:

(a) all persons having the qualifications of electors under the constitution and general and school laws of the state;

(b) guardians, executors, administrators, and trustees residing in the state;

(c) domestic corporations, by their duly authorized agents.

(2) In all elections held under this act, each elector is permitted to cast one vote for each 40 acres of irrigable land or major fraction thereof owned by the elector within the district, irrespective of the location of the irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within congressional subdivisions, platted lots or blocks (except as hereinafter provided for), election precincts, or district divisions, but any elector owning any less than 40 acres of irrigable land is entitled to one vote. Until the irrigable area under the proposed plan of reclamation is determined, all land included within the boundaries of the district shall be considered irrigable land for election purposes.

(3) Whenever land is owned by co-owners, the owners may designate one of their number or an agent to cast the vote for the owners, and one vote only for each 40 acres of irrigable land or major fraction thereof may be cast by the voting co-owner or agent. Whenever land is under contract of sale to a purchaser residing within the state, the purchaser may vote on behalf of the owner of the land. When voting, the agent of a corporation or co-owners, the co-owner designated for purpose of voting, or the purchaser of land under contract of sale, as the case may be, shall file with the secretary of the district or with the election officials a written instrument of his authority, executed and acknowledged by the proper

officers of the corporation, by the co-owners, or by the owner of land under contract of sale, as the case may be, and thereupon the agent or co-owner or purchaser, as the case may be, is an elector within the meaning of this act. Whenever the total irrigable acreage within any one district has been platted or subdivided into lots or blocks to the extent of 5% or more of the total acreage of the district, each elector is permitted to cast one vote for each acre of irrigable land or major fraction thereof owned by the elector within the district, irrespective of the location of such irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within the congressional subdivisions, but any elector owning any less than 1 acre of irrigable land within the district is entitled to one vote. The balloting shall take place in the following manner: 10 votes or less, separate ballots will be used; more than 10 votes, the elector shall vote in blocks of 10 using one ballot for each 10 votes and separate ballots for odd votes over multiples of 10. The election shall otherwise conform with the provisions of 89-1308. The chairman of the commissioners or such commissioner as he may delegate shall determine before each election whether the provisions of this subsection are in force or whether the provisions heretofore set out shall apply.

History: En. Sec. 19, Ch. 146, L. 1909; re-en. Sec. 7184, R. C. M. 1921; amd. Sec. 6, Ch. 157, L. 1923; amd. Sec. 1, Ch. 164, L. 1953; amd. Sec. 19, Ch. 460, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

89-1319. (7187.5) **Application of act.** This act shall apply only when 20 or more owners of land with water rights appurtenant thereto are being served by one stream and its branches or from one source of water supply and in which the rights to the use of water shall have been determined by decree of a court of competent jurisdiction and at least 2,000 acres of land, contiguous in location or of reasonably compact area, are being served by the single stream or source.

History: En. Sec. 2, Ch. 117, L. 1933; amd. Sec. 20, Ch. 460, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

89-1320. (7187.6) **Petition, hearing, and order.** Whenever the owners of land and water rights, as described in 89-1319, desire to organize for the purposes mentioned in this act, a petition to that effect, signed by not less than 60% of the individual landowners who represent not less than 51% of the irrigable acres to be affected by the proposed district and 51% of the cubic feet of water per second decreed or adjudicated in the stream from which the irrigation district is to operate, shall be filed with the clerk of the district court of the county or counties in which the district is to be created. For the purpose of determining whether the requirements of acreage and cubic feet of water per second have been met by the petition, water diverted from the adjudicated stream and distributed under irrigation districts other than the one to be created under this act may not be considered; however, such water and acreage shall be required to pay all assessments the same as other water and acreage

affected by irrigation districts created under this act. Upon filing of the petition, the court shall set a date for a hearing on the petition and a written notice not less than 5 days prior to the hearing shall be mailed to each landowner or water right owner affected by the proposed district. If the court finds from such hearing that an irrigation district, as prayed for in the petition, is feasible and practical, the court shall issue an order creating the irrigation district, which shall constitute the authority for the district to function for the purposes and intent as outlined in this act. The court shall appoint five commissioners, who are landowners or water right owners, affected by such district to act until the first annual meeting.

History: En. Sec. 3, Ch. 117, L. 1933; amd. Sec. 21, Ch. 460, L. 1977.

Amendments

The 1977 amendment substituted "cubic feet of water per second" for references to inches of water; and made minor changes in phraseology, punctuation and style.

89-1322. (7187.8) **Duty of trustees, levy, and indebtedness.** The board of trustees may develop the source of supply; clean, improve, and develop the channel of the stream; and do and perform other work on the main distributing system as will be beneficial to the better distribution of the waters of the decreed water right stream, but in no case may the board, to cover the expenses of such work, levy to exceed 25 cents per acre in any one year. Whenever waters of the stream under the irrigation district created by this act are commingled with other waters or it is difficult to determine how many acres are irrigable by the water rights held in the stream, the acre basis of levy shall be determined by the number of cubic feet of water per second owned by such party or parties at the rate of .025 cubic feet of water per second to the acre. The board may not issue bonds or incur any indebtedness other than warrant indebtedness under the limitations imposed by law.

History: En. Sec. 5, Ch. 117, L. 1933; amd. Sec. 22, Ch. 460, L. 1977.

Amendments

The 1977 amendment substituted "cubic feet of water per second" in the second sentence for "inches"; substituted ".025 cubic feet of water per second" in the second sentence for "one inch of water, statutory measurement"; and made minor changes in phraseology, punctuation and style.

CHAPTER 14—IRRIGATION DISTRICTS—EXTENSION—CHANGE IN BOUNDARIES OF AREA—COURT PROCEDURE

Section 89-1411. Notice of hearing.

89-1411. (7194.3) **Notice of hearing.** On such petition being filed, the district court or judge thereof shall make an order fixing the time and place for a hearing and directing that notice be given. Thereupon the clerk of the court shall cause to be published at least once a week for 2 successive calendar weeks in a newspaper of general circulation in the county where the petition is filed, with preference given to a newspaper published in the county, a notice stating the time and place fixed by the district court when and where the hearing on the petition will be had

and containing a brief statement of the matters set forth in the petition and the object thereof. If any portion of the lands sought to be excluded from the district lies within any other county or counties, the notice shall also be published as provided above in a newspaper of general circulation in the other county or counties, with preference given to a newspaper published in the other county or counties. The first publication of the notice may not be less than 30 days prior to the time mentioned in the notice for the hearing.

History: En. Sec. 3, Ch. 132, L. 1935; amd. Sec. 23, Ch. 460, L. 1977.

Amendments

The 1977 amendment substituted "a newspaper of general circulation" in two places for "the official newspaper"; inserted "with preference given to a newspaper published in the county" in two places; and made minor changes in phraseology, punctuation and style.

CHAPTER 16—IRRIGATION DISTRICTS—RIGHTS OF WAY—USE AND APPORTIONMENT OF WATER

Section 89-1607. Board to apportion water.
89-1616. Interference with commissioners or distribution system—penalty.

89-1607. (7202) **Board to apportion water.** The board of commissioners shall apportion the water for irrigation among the lands in the district in a just and equitable manner, and the maximum amount apportioned to any land shall be the amount that can be beneficially used on said land, and such amount of water shall become and shall be appurtenant to the land and inseparable from the same, but subject to reduction as hereinafter provided. All water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of Congress, and rules and regulations of the secretary of the interior, and the provisions of said contract in relation thereto.

History: En. Sec. 32, Ch. 146, L. 1909; amd. Sec. 6, Ch. 145, L. 1915; re-en. Sec. 7202, R. C. M. 1921; amd. Sec. 1, Ch. 314, L. 1977.

Amendments

The 1977 amendment deleted a proviso at the end of the first sentence; and made minor changes in phraseology and punctuation. For prior version, see parent volume.

Effective Date

Section 2 of Ch. 314, Laws 1977 provided the act should be effective on its passage and approval. Approved April 7, 1977.

89-1616. (7207.4) **Interference with commissioners or distribution system—penalty.** Any person who in any manner interferes with the commissioners of an irrigation district or their lawful agent or employee in the carrying out of the powers conferred by this act or who changes or tampers with any lock box, head gate, or other device for the apportionment or distribution of water installed by or under the authority of the commissioners or who in any manner obstructs or changes the flow of water in the distribution system of any irrigation district without authority of the commissioners of the district shall, in the discretion of the commissioners, be subject to a forfeiture of his right to the delivery of water through the distribution system of the district so long as such acts con-

tinue and is guilty of obstructing a public officer or criminal mischief, as appropriate, and is punishable as provided by 94-7-302 or 94-6-102, as applicable.

History: En. Sec. 4, Ch. 63, L. 1935; amd. Sec. 24, Ch. 460, L. 1977.

Amendments

The 1977 amendment substituted "obstructing a public officer or criminal mischief, as appropriate" near the end of the section for "a misdemeanor"; substituted the punishment provided in the appropriate sections cited for a fine of $10 to $100 or imprisonment in the county jail for 1 to 30 days or both; and made minor changes in phraseology and punctuation.

CHAPTER 17—IRRIGATION DISTRICTS—BONDS

Section 89-1701. Limitations on debt-incurring power.
89-1702. Exemption of irrigation district property.
89-1703. Petition for bonds and issuance of bonds.
89-1704. Confirmation by district court.
89-1705. Details relating to bonds.
89-1706. Liens of bonds.
89-1708. Delivery of bonds—disposition of proceeds.
89-1712. Refunding bonds.
89-1713. Purpose of bonds—petition, requirements, and contents of.

89-1701. (7208) **Limitations on debt-incurring power.** (1) The board of commissioners or other officers of the district may not incur any debt or liability, either by issuing bonds or otherwise, except as provided in this act. No irrigation district may become indebted, in any manner or for any purpose in any one year, in an amount exceeding 15% of the assessed valuation of the district, except as provided in subsection (2).

(2) (a) For the purpose of organization; for any of the immediate purposes of this chapter; to make or purchase surveys, plans, and specifications; for stream gauging and gathering data; or to make any repairs occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur the indebtedness of as many dollars as there are acres in the district and may cause warrants of the district to issue therefor.

(b) For the purpose of organization, for any of the immediate purposes of this chapter, or to meet the expenses occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur (in addition to the 15% limitation of subsection (1)) an additional indebtedness not exceeding 10% of the assessed valuation of the district and may cause warrants of the district to issue therefor.

(c) The limitation of subsection (1) does not apply to warrants issued for unpaid interest on the valid bonds of any irrigation district.

(d) The limitation of subsection (1) does not apply to any bonds issued under this chapter pursuant to a provision which expressly supersedes the limitation.

(3) Any debt or liability incurred in excess of the limitations provided by the irrigation district laws is void.

History: En. Sec. 38, Ch. 146, L. 1909; amd. Sec. 1, Ch. 110, L. 1913; amd. Sec. 1, Ch. 127, L. 1913; re-en. Sec. 7208, R. C. M. 1921; amd. Sec. 32, Ch. 234, L. 1971; amd. Sec. 25, Ch. 460, L. 1977.

Amendments

The 1971 amendment deleted from the end of the section "bearing interest at the rate not to exceed six per centum per annum."

The 1977 amendment inserted the subsection designations; added the last sentence to subsection (1); inserted subdivisions (2)(b) through (d); and made minor changes in phraseology, punctuation and style.

89-1702. (7209) **Exemption of irrigation district property.** The bonds issued under the provisions of this act, rights of way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and all other personal property belonging to any irrigation district organized under the laws of Montana and not operating for profit may not be taxed for state, county, or municipal purposes.

History: En. Sec. 39, Ch. 146, L. 1909; re-en. Sec. 7209, R. C. M. 1921; amd. Sec. 2, Ch. 492, L. 1977.

Amendments

The 1977 amendment substituted "equipment, machinery, motor vehicles, and all other personal property" for "other property of like character"; inserted "organized under the laws of Montana and not operating for profit"; and made minor changes in phraseology and punctuation.

89-1703. (7210) **Petition for bonds and issuance of bonds.** (1) The board of commissioners of a district established under the provisions of chapter 12 of Title 89 may authorize and issue negotiable coupon bonds for the district for the purpose of providing the necessary funds:

(a) for constructing the necessary irrigation canals and works, including drainage works, and constructing works for the generation and distribution of electricity within the district and for acquiring the property and rights necessary therefor;

(b) for acquiring, by purchase or otherwise, waters, water rights, canals, reservoirs, reservoir sites, irrigation works, drainage works, and works for the generation and distribution of electricity, whether such works are constructed or partially constructed;

(c) for meeting the expense incurred incident to the construction or acquisition of such works and property, including administrative, engineering, and legal expenses;

(d) for assuming, as principal or guarantor, indebtedness to the United States on account of district lands;

(e) for providing a sufficient amount of money to pay the interest on all negotiable coupon bonds of the district for a period not exceeding 5 years;

(f) for redeeming or paying all or any portion of the existing indebtedness of the district, evidenced by outstanding bonds; delinquent interest coupons and accrued interest; or warrants, together with all delinquent and accrued interest, whether such indebtedness has or may hereafter become payable at the option of the district, by consent of the bondholders or by any lawful means; or

(g) for otherwise carrying out the provisions of the irrigation district laws.

(2) No bonds provided for in this section may be authorized or issued by or on behalf of any irrigation district organized hereunder and no con-

tract may be made with the United States as provided in 89-1301 except upon a petition signed by at least 60%, in number and acreage, of the holders of title or evidence of title to lands included within the district or by at least 75%, in number and acreage, of the holders of title or evidence of title to such lands who are residents of the county or counties in which lands of the district are situated. The petition shall be addressed to the board of commissioners, set forth the aggregate amount of bonds to be issued and the purpose or purposes thereof, have attached thereto an affidavit verifying the signatures to the petition, and be filed with the secretary of the board of commissioners. When bonds are issued for the sole purpose of redeeming or paying the existing and outstanding bonds or warrants, or both, including delinquent and accrued interest, of such district, such bonds may be authorized and issued in the manner provided for by 89-1712 and 89-1713.

(3) Upon the filing of the petition, the board of commissioners shall, by appropriate order or resolution, authorize and direct the issuance of the bonds of the district to the amount and for the purpose or purposes specified in the petition; fix the numbers, denominations, and maturity or maturities of the bonds; specify the rate of interest thereon and whether payable annually or semiannually; designate the place of payment of the bonds and the interest coupons, within or without the state of Montana; prescribe the form of the bonds and interest coupons to be attached thereto; and provide for the levy of a special tax or assessment as provided in this act on all the lands in the district for the irrigation and benefit of which the district was organized and the bonds are issued or the contract is to be made, sufficient in amount to pay the interest on and principal of the bonds when due and all amounts to be paid to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 89-1301.

(4) If contract is to be made with the United States as provided in 89-1301 and bonds are not to be deposited with the United States in connection with the contract, the board of commissioners need not authorize the issuance of bonds, or if bonds are required in addition to the contract, the commissioners may authorize bonds only for the amount needed in addition to the contract. Such order or resolution shall also provide for the confirmation proceedings in the district court as provided in 89-1704.

History: En. Sec. 40, Ch. 146, L. 1909; amd. Sec. 11, Ch. 145, L. 1915; amd. Sec. 7, Ch. 153, L. 1917; amd. Sec. 5, Ch. 116, L. 1919; re-en. Sec. 7210, R. C. M. 1921; amd. Sec. 7, Ch. 157, L. 1923; amd. Sec. 1, Ch. 185, L. 1929; amd. Sec. 26, Ch. 460, L. 1977.

Amendments

The 1977 amendment rewrote subsection (1); and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

89-1704. (7211) **Confirmation by district court.** (1) Within 10 days after the adoption of the order or resolution mentioned in the preceding section, the board of commissioners shall file a petition in the district court of the judicial district where the office of the board is located to determine the validity of the proceedings relative to the issuance of the bonds and the levy of the special tax or assessment.

(2) Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested shall be had by giving notice. The petition shall set forth:

(a) generally, the establishment and organization of the district;

(b) a certified copy of the petition mentioned in the preceding section;

(c) a certified copy of the order or resolution mentioned in the preceding section;

(d) a prayer for the confirmation of the proceedings of the board stated in the petition and for the confirmation of the bond issue and the special tax or assessment levied to pay the bonds and interest thereon.

(3) Upon the filing of this petition in the district court, the court shall fix the time for the hearing of the petition, which may not be less than 15 days from the date of filing the petition in the court, and shall order the clerk of the court to give notice of the filing of the petition and the date of the hearing thereon by publication at least once a week for 2 calendar weeks in a newspaper published or of general circulation in the county where the office of the board of commissioners of the district is situated and also by posting a written or printed copy of such notice in at least three public places in each division of the district, the first of such publications and such posting to be not less than 15 days prior to the date fixed for the hearing.

(4) The notice shall state the substance of the petition and the time and place fixed for the hearing thereon and that any person interested in or whose rights may be affected by the issuance or sale of the bonds, the levy of the special tax or assessment, or the proceedings had or to be had by the board of commissioners with respect to such matters may, on or before the day fixed for the hearing of the petition, answer the petition and may appear at the hearing and contest the granting of the prayer of the petition and the entry of any order of confirmation.

(5) Any person interested in or whose rights may be affected by the issuance or sale of the bonds, the levy of the special tax or assessment, or the proceedings had or to be had by the board of commissioners of the district in connection with such matters and the entry of any order of confirmation may enter his appearance in such proceedings and answer the petition and contest the granting of the prayer of the petition.

(6) The provisions of Title 93 respecting the answer to a verified complaint are applicable to an answer to the petition. The persons so answering the petition are the defendants in the proceeding, and the board of commissioners is the plaintiff. Every material statement of the petition not specifically controverted by the answer shall be taken as true, and every holder of title or evidence of title to lands included in the district failing to answer the petition shall be considered to admit as true all the material statements thereof. The procedure in such action shall be determined by Title 93.

(7) Upon the hearing, the district court shall find and determine whether the provisions and requirements of the preceding section have been complied with and whether notice of the filing of the petition in the

district court and of the time and place of the hearing has been given for the time and in the manner prescribed and may examine and determine the regularity, legality, and validity of the proceedings preliminary and relative to the issuance of the bonds and the levy of the special tax or assessment in the petition mentioned and the legality and validity of the bonds and special tax or assessment and all actions taken by the board of commissioners in connection with such matters and shall hear all objections filed to the proceedings or any part thereof or to the issuance of the bonds or the levy of the special tax or assessment or any portion thereof. The court, in inquiring into the regularity, legality, and validity of the proceedings, shall disregard any error, omission, or other irregularity which does not affect the substantial rights of the parties to the proceedings. The court may ratify, approve, and confirm the proceedings in whole or in part and may ratify, approve, and confirm the bonds and special tax or assessment and enter its judgment accordingly.

(8) From any such judgment an appeal may be taken to the supreme court at any time within 10 days from the entry of the judgment. The appeal shall be taken, perfected, and heard in the manner prescribed by Title 93 covering appeals from district courts to the supreme court. If no appeal is taken in time or if taken and the judgment of the district court is affirmed by the supreme court, the judgment is final. The costs of the proceedings shall be allowed or apportioned between the parties in the discretion of the court.

History: En. Sec. 41, Ch. 146, L. 1909; re-en. Sec. 7211, R. C. M. 1921; amd. Sec. 1, Ch. 161, L. 1923; amd. Sec. 2, Ch. 185, L. 1929; amd. Sec. 27, Ch. 460, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

89-1705. (7212) **Details relating to bonds.** (1) All bonds issued under the provisions of this act shall run for a period not longer than 40 years from their date but may contain a clause providing for their prior redemption and payment, at the option of the board of commissioners of the district, on any interest payment date after 5 years from their date. Instead of straight maturity bonds, bonds may be issued to mature serially at such times and in such amounts as the board of commissioners shall determine, but no bonds so issued may run for a longer period than 40 years from the date of issue. The bonds shall bear interest from their date until paid, payable annually or semiannually with the installments of interest to date of maturity of principal to be evidenced by appropriate coupons attached to each bond. The bonds and interest coupons shall be payable at such place or places within or without the state of Montana as the board of commissioners shall prescribe.

(2) The bonds shall be of such denomination or denominations and in such form as the board of commissioners shall prescribe. An issue of bonds is defined to be all the bonds issued in accordance with a resolution or order of the board of commissioners. Each issue of the bonds of a district shall be numbered consecutively as authorized, and the bonds of each issue shall be numbered consecutively. The board of commissioners shall fix the date of the bonds, or they may divide any issue into two or

more divisions and fix different dates for the bonds of each division. The date of any bond must be subsequent to the order or resolution authorizing it and prior to its delivery to a purchaser from the district.

(3) All bonds issued hereunder shall be signed by the president and attested by the secretary of the board under the corporate seal of the district, and each of the interest coupons to be attached to the bonds shall be executed by the signatures of the president and secretary. Each bond shall be signed and each interest coupon shall be executed by the president and secretary of the board of commissioners who may be in office at the date of the bond and coupons or at any time thereafter prior to the delivery of the bond to the purchaser from the district.

(4) The board of commissioners may provide for the registration of bonds in their discretion. The secretary of the board of commissioners and county treasurer shall each keep a record of the bonds sold or otherwise disposed of; their date, number, amount, maturity, or maturities; to whom sold; rate of interest; and the place or places of payment.

History: En. Sec. 42, Ch. 146, L. 1909; amd. Sec. 1, Ch. 17, Ex. L. 1919; re-en. Sec. 7212, R. C. M. 1921; amd. Sec. 8, Ch. 157, L. 1923; amd. Sec. 12, Ch. 260, L. 1959; amd. Sec. 33, Ch. 234, L. 1971; amd. Sec. 28, Ch. 460, L. 1977.

Amendments

The 1971 amendment deleted "at a rate not to exceed six per centum per annum" after "until paid" in the third sentence of subsection (1); and made minor changes in style.

The 1977 amendment deleted a provision that the bonds be payable in gold coin from the first sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

89-1706. (7213) **Liens of bonds.** All bonds issued hereunder and all amounts to be paid to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 89-1301 provided, shall be a lien upon all the lands originally or at any time included in the district for the irrigation and benefit of which said irrigation district was organized and said bonds were issued, and for the benefit of which such contract between the district and the United States was made, except upon such lands as may at any time be included in such district on account of the exchange or substitution of water under the provisions of section 89-1611, if any there be; and all such lands shall be subject to a special tax or assessment for the payment of the interest on and principal of said bonds; and all amounts to be paid to the United States under any such contract between the district and the United States, and said special tax or assessment, shall constitute a first and prior lien on the land against which levied, to the same extent and with like force and effect as taxes levied for state and county purposes.

All liens herein created shall remain upon the lands for a period of eight (8) years after the date of maturity of the obligation; thereafter, the lands and the titles thereto shall be free from any such liens.

History: En. Sec. 43, Ch. 146, L. 1909; amd. Sec. 12, Ch. 145, L. 1915; amd. Sec. 8, Ch. 153, L. 1917; amd. Sec. 8, Ch. 116, L. 1919; re-en. Sec. 7213, R. C. M. 1921; amd. Sec. 1, Ch. 190, L. 1973.

Amendments

The 1973 amendment added the second paragraph.

89-1708. (7215) **Delivery of bonds—disposition of proceeds.** If bonds are sold for cash, they shall be delivered by the board of commissioners to the county treasurer of the county in which the office of the district is located, who shall deliver them to the purchaser upon receipt of the purchase price, and after making a complete record of them. Delivery of the bonds may be made by the county treasurer to the purchaser at any place or places inside or outside this state, and the county treasurer may receive the proceeds of the sale of the bonds at the place or places of delivery. The county treasurer shall place the proceeds of the sale to the credit of the district, and the proceeds shall be paid out by the county treasurer only upon the written order of the board of commissioners, signed by the president and secretary under the seal of the district. The proceeds shall be spent only for the purpose for which the bonds were issued. If any portion of the funds realized from the sale of bonds is not needed immediately for the purpose for which the bonds were issued, the board of commissioners may direct the investment of the funds, and any other surplus funds of the district, [or] any portion thereof, in interest-bearing securities of the United States, or of the state of Montana, or in interest-bearing certificates of deposit of national or state banks approved by the department of community affairs. A bank shall furnish an indemnity bond to be approved by the board of commissioners and the department of community affairs. The county treasurer shall transfer to the credit of the district, and place to the credit of the fund or funds as the board of commissioners may direct, all interest received upon money or securities of the district entrusted to his care.

History: En. Sec. 45, Ch. 146, L. 1909; re-en. Sec. 7215, R. C. M. 1921; amd. Sec. 10, Ch. 157, L. 1923; amd. Sec. 1, Ch. 258, L. 1967; amd. Sec. 145, Ch. 431, L. 1975.

Compiler's Notes

The compiler has substituted the bracketed word "or" in this section for "of," to correct an apparent typographical error in the 1975 amendatory act.

Amendments

The 1967 amendment inserted "and any other surplus funds of the district" after "investment of such fund" in the fifth sentence.

The 1975 amendment deleted "whenever, in its judgment, the same may be to the best interest of the district" in the fifth sentence after "the board of commissioners"; substituted "department of community affairs" for "state superintendent of banks" at the end of the fifth and sixth sentences; and made changes in phraseology and punctuation.

89-1712. (7226.1) **Refunding bonds.** Any irrigation district may issue refunding bonds.

History: En. Sec. 1, Ch. 155, L. 1929; amd. Sec. 19, Ch. 315, L. 1974.

Amendments

The 1974 amendment deleted a second clause providing that an act relating to irrigation districts under the jurisdiction of the public service commission applied to such refunding bonds. For prior text, see parent volume.

89-1713. (7226.2) **Purpose of bonds—petition, requirements, and contents of.** (1) An irrigation district may issue refunding bonds for the purpose of redeeming or paying the indebtedness or any portion thereof of the district, whether represented by existing and outstanding bonds, interest coupons thereof, or warrants, including accrued and unpaid interest on the bonds, coupons, and warrants, and whether such indebtedness is due or not due or has or may become payable at the option of the

district, by consent of the bondholders or warrant holders, or by any legal means and whether such indebtedness is now existing or may be created, and funds in the treasury of the district are not available for the payment of the same. The refunding bonds may be issued in one or more series. The petition for the refunding bonds, signed as required by law by at least 60% in number and acreage of the holders of title or evidence of title to the lands included within the district and addressed to the board of directors or commissioners of the district, may contain the following specifications, in addition to the matters now required by law:

(a) how many series of bonds shall be issued; and

(b) the terms, conditions, and liens of the bonds and the terms and conditions upon which each of the series of bonds shall be exchanged for outstanding bonds of the district if the same are to be exchanged and not sold.

(2) The specifications provided for in subsection (1), when set forth in the petition, are controlling upon the board of directors or commissioners. The petitioners shall in the specifications set forth the contract of exchange to be made, with particularity. The contract may include any term, requirement, grant, transfer of property or rights, covenant, or condition considered by the petitioners to be in the best interest of the district. The petition shall state that the board of directors or commissioners of the district may authorize and direct the issuance of bonds according to the specifications of the petition, make any such contract, and bind the irrigation district under the contract.

History: En. Sec. 2, Ch. 155, L. 1929; amd. Sec. 29, Ch. 460, L. 1977.

Amendments

The 1977 amendment rewrote this section. For prior version, see parent volume.

CHAPTER 18—IRRIGATION DISTRICTS—TAXES AND ASSESSMENTS

Section 89-1801. Tax or assessment to pay bonds and interest.
89-1803. All irrigable lands chargeable alike.
89-1804. Annual tax levy—apportionment when tracts divided.
89-1805. Procedure for the determination of irrigable area.
89-1806. Apportionment of costs when bonds issued.
89-1811. County treasurer as custodian of district funds.
89-1812. Collection of taxes or assessment.
89-1816. Proceeds of sale.
89-1819. Sale by county commissioners when land not redeemed.

89-1801. (*7232*) **Tax or assessment to pay bonds and interest.** (1) All bonds and the interest thereon issued hereunder and all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 89-1301, shall be paid by revenue derived from a special tax or assessment levied upon all the lands included in the district, except upon those lands that have been included in the district on account of the exchange or substitution of water under the provisions of 89-1611, if there are any. All lands in the district at the time the bonds are issued and all lands subsequently included which are so chargeable under the provisions of

this act shall be and remain liable to be taxed and assessed for the payment of the bonds and interest and all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 89-1301.

(2) The board of commissioners of the district, in the order or resolution authorizing and directing the issuance of bonds of the district mentioned in 89-1703, shall provide for the annual levy and collection of a special tax or assessment upon all the lands included in the district and subject to taxation and assessment, sufficient in amount to meet the interest on the bonds promptly when and as the same accrues and to discharge the principal thereof at their maturity or respective maturities and to meet all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 89-1301, at the times such payments by such contract become due and payable. When straight maturity bonds are issued, the board of commissioners of the district shall create and maintain a sinking fund sufficient to pay and discharge the bonds at maturity. If the bonds are issued for 20 years or less, there shall be annually levied for the sinking fund a special tax or assessment sufficient to produce a net amount represented by the quotient found by dividing the aggregate amount of the principal of the bonds by the number of years the bonds have to run; but if the bonds are issued for more than 20 years, it is not necessary to levy a special tax or assessment for sinking fund until the 20th year prior to the maturity of the bonds, at which time and each year thereafter there shall be levied and collected a special tax or assessment sufficient to produce a net sum equal to one-twentieth part of the aggregate amount of the principal of the bonds.

(3) A certified copy of such resolution shall be filed with the clerk of the board of county commissioners of each county in which the lands of the irrigation district lie, and the special tax or assessment therein provided for shall be levied and collected as prescribed and when so collected shall, by the county treasurer having custody of the funds of the district, be placed in a special fund and used solely for the payment of all bonds issued under the provisions of this chapter and interest thereon, so long as any of the bonds or interest coupons remain outstanding and unpaid. Whenever the payments are made for amounts due or to become due to the United States, under a contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 89-1301, the special fund shall be known as the United States contract fund.

(4) In the event that for any reason a special tax or assessment provided for cannot or may not be levied and collected in time to meet any interest falling due on any bonds issued, the board of commissioners shall provide for and pay such interest when due, either out of any of the funds in hand in the treasury of the district not otherwise appropriated or by warrants drawn against the next district tax or assessment levied

or to be levied. These warrants shall be in addition to those mentioned in 89-1701.

(5) The board of commissioners shall direct the investment of the funds in any bond sinking fund in interest-bearing securities whenever in their judgment the investment may be to the best interest of the district. All such securities shall be converted into cash in time to meet the principal on the bonds payable from such sinking fund promptly at their maturity.

History: En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R. C. M. 1921; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977.

Amendments

The 1971 amendment deleted "(which may bear interest at a rate not to exceed six per centum per annum)" after "or by warrants" near the end of the first sentence of subsection (4); and made minor changes in style.

The 1977 amendment rewrote subsection (3); and made minor changes in phraseology, punctuation and style. For prior version of subsection (3), see the parent volume.

89-1803. (7234) **All irrigable lands chargeable alike.** (1) All irrigable lands in each irrigation district, except such lands that are included within the district because of the exchange or substitution of water under the provisions of 89-1611, shall pay at the same rate for all purposes for which the lands are charged, except as otherwise provided by law. There may be a minimum charge of $5 against each separately owned tract of land regardless of its size, as provided in 89-1804. Whenever water used for the irrigation of any lands within an irrigation district is obtained by pumping to different elevations, the cost of maintenance, operation, and pumping to each separate elevation shall be apportioned and levied upon the lands lying under the ditch or ditches running from that particular elevation, in such manner as may be determined fair and equitable by the board of commissioners after considering the facts in each case. This apportionment shall be made by the board of commissioners and included each year in the assessment provided for by 89-1804.

(2) The amount of the assessment for maintenance, operation, and pumping of water to each separate elevation, whenever there are different elevations, shall be determined by the board of commissioners in such manner and upon such notice to the persons interested in the district as the board in its rules may provide. Whenever a contract has been made with the United States, the lands within the district, whether originally included or later annexed to the district, shall pay in accordance with the federal reclamation laws and the public notices, orders, and regulations issued thereunder and in compliance with any contracts made by the United States with the owners of the lands and in compliance with the contract between the districts and the United States. Whenever the works necessary for the completed project are constructed progressively over a period of years and whenever a portion of the lands within the district are or can be irrigated 1 year or more before the completion of the entire project, those lands, so irrigated or that can be so irrigated through the built portion of the project, shall pay for the cost of operating that portion of the project serving them with irrigation water and also shall pay such portion of the interest charges as its irrigable area bears to the

irrigable area of the entire project. Whenever lands have appurtenant thereto a partial water right or partial rights in a system of irrigation other than that of the districts, the amounts payable shall be equitably apportioned.

History: En. Sec. 48, Ch. 146, L. 1909; amd. Sec. 10, Ch. 153, L. 1917; amd. Sec. 1, Ch. 158, L. 1921; re-en. Sec. 7234, R. C. M. 1921; amd. Sec. 18, Ch. 157, L. 1923; amd. Sec. 1, Ch. 136, L. 1925; amd. Sec. 1, ch. 135, L. 1961; amd. Sec. 31, Ch. 460, L. 1977.

Amendments

The 1977 amendment added "except as otherwise provided by law" at the end of the first sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

89-1804. (7235) **Annual tax levy—apportionment when tracts divided.** (1) and (2). * * * [Same as parent volume.]

(3) Whenever the board of commissioners has provided for the payment of any indebtedness of the district by levy of a special tax or assessment, and thereafter makes provision for the payment of said indebtedness by the issuance of bonds, said board may cancel any portion or all of said levy theretofore made to raise funds to pay said indebtedness; and whenever said board has provided for the payment of any indebtedness of the district by the authorization of bonds and the levy of a special tax or assessment to pay the principal of and interest on said bonds, the [and] thereafter cancels said issue of bonds as provided for in section 89-1707 said board may cancel any portion or all of said levy theretofore made to raise funds to pay the principal of or interest on said bonds so canceled, and refund to the respective persons paying the same the funds, if any, in the custody of the county treasurer collected for the purpose of meeting the principal of and interest on such bonds so canceled.

(4) Any land or lands which may for any reason have escaped assessment in any previous year or years may be assessed or listed for the omitted years and omitted charges, in any subsequent year at the time of the making of the assessment in and for such subsequent year, but no such assessment shall be made later than three years after the occurrence of such omission.

History: En. Sec. 49, Ch. 146, L. 1909; amd. Sec. 16, Ch. 145, L. 1915; amd. Sec. 1, Ch. 148, L. 1921; re-en. Sec. 7235, R. C. M. 1921; amd. Sec. 19, Ch. 157, L. 1923; amd. Sec. 2, Ch. 135, L. 1961; amd. Sec. 1, Ch. 51, L. 1973.

Amendments

The 1973 amendment deleted subdivision (3) and renumbered former subdivisions (4) and (5) as subdivisions (3) and (4).

89-1805. (7235.1) **Procedure for the determination of irrigable area.** (1) For the purpose of determining the number of acres of irrigable lands in each 40-acre tract or fractional lot as designated by the United States public survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, then in each such tract) of land in the district, the board of commissioners of any irrigation district established under the provisions of chapter 12 of Title 89, whenever considered advisable and at any time except as otherwise provided, may cause a careful topographical survey and map of the lands to be made, as well as a specific examination of the character of the soil of each tract. Upon completion of the survey and

maps and examination, the board shall give notice that at a meeting of the board, to be held at the office of the board on a day to be fixed in the notice, the board will determine the irrigable area of each tract of land in the district and that it will hear and consider any objection on the part of any landowner in the district to the determination and to adjustment of the irrigable area of the district or of any lands within any tract or subdivision thereof. It is not necessary to describe the tracts in the notice. The notice shall be given by publication once a week for 2 successive calendar weeks in a newspaper of general circulation in the county where the office of the board is located, and whenever lands of any irrigation district lie in more than one county, the notice shall also be published in a newspaper or newspapers of general circulation in each county. The last publication of the notice shall be at least 5 days prior to the date fixed for the meeting.

(2) At the meeting, the board shall proceed to determine and fix the number of acres in each tract or subdivision irrigable from the works or proposed works of the district and shall hear all persons interested who may appear and shall continue in session from day to day (exclusive of Sundays and legal holidays) as long as may be necessary and until the determination of irrigable area is completed. The board shall hear and receive all evidence offered, including maps and surveys caused to be prepared by it as well as maps and surveys prepared by any owner of lands. Upon such determination, the irrigable area so fixed shall become and thereafter be the acreage upon which any special tax or assessment shall be levied, and each irrigable acre shall pay at the same rate as every other acre of irrigable land in the district, except as otherwise provided by law. Any special tax or assessment levied for any purpose is a lien upon the entire 40-acre tract or fractional lot as designated by the United States public survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, then against each such tract) of land in the district of which the irrigable area forms a part, and the lien shall attach to the entire tract as of January 1 in the year in which the special tax or assessment is levied.

(3) Upon completing the determination, the board shall fix, by appropriate resolution or order, the total acreage and the irrigable acreage of each tract or subdivision and shall cause to be prepared a list of all lands in the district, which list shall contain an accurate description of each 40-acre tract or fractional lot as designated by the United States public survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, then of each such tract) of land in the district, the total acreage and the number of irrigable acres therein as so fixed and determined, and the name of the owner or holder of title or evidence of title thereof, ascertained as provided in 89-1201. This list, when completed and adopted, shall be filed in the office of the board of commissioners and shall remain there for public inspection. A certified copy of the resolution and list shall be filed with the county clerk and recorder of each county in which any portion of the lands in the district are situated. The lands

not situated in the county in which such copy is filed shall be omitted from the copy.

(4) No special tax or assessment may be levied against any 40-acre tract or fractional lot as designated by the United States public survey or platted lot, if land is subdivided in lots and blocks (or whenever lands are owned in less than 40-acre tracts or in less than the platted lot, then against each such tract) found by the board to contain no irrigable land; nor may any lien created after the order of determination attach to any such tract, nor may the owner or owners of any tract or tracts have any vote or votes in any proceeding or election under the provisions of Chapter 146 of the Laws of 1909 or any amendment thereof or act supplementary thereto, after the making of such order, unless their land or a portion thereof is found by the board to contain an area irrigable from the works or proposed works of the district.

(5) Upon the determination provided for in this section, the board of commissioners may refund any taxes paid or cancel any unpaid taxes or assessments levied upon an acreage in excess of that so fixed by the order of determination and whenever necessary, may issue warrants therefor.

(6) Within 60 days after the resolution adopting the list, the board of commissioners may petition the district court for confirmation of their acts in determining the irrigable area and in refunding or canceling any taxes or assessments. The majority in number and acreage of the holders of title or evidence of title to lands in the district, ascertained as provided in this act, may likewise within such 60-day period petition the district court for review of the actions of the board of commissioners. However, one of these proceedings, if prosecuted to determination, is exclusive of the other. Upon such proceeding, the court may order any assessment of taxes upon any land or lands to be reduced or raised according to the irrigable area as found by the court or taxes previously levied upon any area shown to be excessive to be refunded or canceled.

(7) The provisions of 89-1402 regarding the procedure as well as the right and time to appeal apply to any proceeding instituted pursuant to this section; provided nothing in this section affects or impairs the lien of any bonds issued by the district. If confirmation proceedings are held and a certified copy of the order of confirmation is filed with the county clerk and recorder of the county in which any portion of the lands is situated, it is not necessary to file in the office the certified copy of the resolution and order of the board or of the list provided for in this section.

(8) Whenever districts have been established in order to cooperate with the United States under the federal reclamation laws or under any act of congress which permits the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of construction works or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands, the determination of the irrigable area of the lands in the district may be made

by the board of commissioners in the manner provided in this section or by the United States at the option of the latter, and, if the United States determines the irrigable area, the proceeding for the apportionment and distribution of the costs of the proposed works or improvements provided for in 89-1806 may not be had.

History: En. Sec. 20, Ch. 157, L. 1923; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977.

Amendments

The 1975 amendment substituted "the first day of January" for "the first Monday of March" in the last sentence of subsection (2).

The 1977 amendment substituted "established under the provisions of chapter 12 of Title 89" in the first sentence of subsection (1) for "organized hereunder"; added "except as otherwise provided by law" to the third sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

89-1806. (7235.2) **Apportionment of costs when bonds issued.** (1) Whenever a petition for the issuance of bonds of any irrigation district established under the provisions of chapter 12 of Title 89 has been filed as provided in 89-1703, the board of commissioners of the district shall examine or cause to be examined each 40-acre tract or fractional lot as designated by the United States public survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, then each such tract) of land in the district and cause a careful topographical survey and map to be made in the manner provided for in 89-1805. Upon such examination, the board shall determine the number of irrigable acres in each such tract and shall apportion and distribute the cost of the works or improvements for which the bonds are to be issued over the tracts within the district according to the irrigable area in each of the tracts or subdivisions, so that each such irrigable acre is required to bear the same burden of such costs as each other irrigable acre in the district, except as otherwise provided by law. The special tax or assessment levied to meet the principal of and interest on the bonds so authorized is a lien upon the entire tract of which such irrigable area forms a part or portion as of January 1 of the year in which the special tax or assessment is levied, and the number of irrigable acres in each such tract as so determined may not be diminished but may be increased during the term for which any such bonds are issued or until the bonds are liquidated in full.

(2) Whenever a proceeding for the determination, in whole or in part, of the irrigable area of the lands in the district has already been had or a topographical survey or maps thereof prepared or a court confirmation of prior proceedings had, in part or in full, the board may, in its discretion, adopt all or such portions of the prior proceedings and need not cause an additional survey or maps or examination of any of such tracts to be made or redetermine the irrigable area of any such tract.

(3) The board shall make such determination after the hearing and shall fix the total acreage and the irrigable acreage and shall cause a list of such irrigable area to be made and filed, and the proceedings of the board in connection with such determination, including the hearing and notice of the hearing and order or resolution fixing the irrigable area and the preparation and filing of the list, shall conform to the requirements set

forth in 89-1805. At the hearing, the board shall also determine the amount and rate per acre necessary to be levied against each irrigable acre in the district to meet the interest on and principal of the authorized bond issue, and any tax levied for such purposes is a lien upon the entire tract of which the irrigable area forms a part. If any landowner in the district appears before the board at that time and pays in cash the amount fixed against his land as its proportion of the amount found necessary for the purposes for which the bonds were authorized and are to be issued, his land shall be excluded from the lien of the bond issue and the amount of bonds intended to be issued shall be reduced by the amount of such payment. Any person interested who fails to appear before the board at the meeting may not thereafter be permitted to contest the proceedings of the board or any part thereof, except upon special application to the court in the proceedings for the confirmation of the bonds and a showing of reasonable excuse for failure to appear before the board of commissioners.

(4) In case any such landowner makes objection to the proceedings of the board in determining the irrigable area in his own or any other tract of land or the amount or rate per acre of the special tax and assessment to be levied against each irrigable acre in the district for the purposes of the proposed bond issue and the objection is overruled by the board, the objection without further proceedings shall be regarded as appealed to the district court and shall, with the other proceedings of the board at the meeting, be heard at the proceedings to confirm the bonds, as provided in 89-1704, and when so confirmed, the order overruling such objection and confirming the order of the board determining the irrigable area of each tract of land and apportioning the cost of the improvement thereto shall become final, binding, and conclusive upon the landowner and upon the district, unless appealed from as provided in 89-1704.

(5) Whenever the irrigable area of the lands in any irrigation district has been determined and confirmed, no owner or holder of title or evidence of title to lands in the district, during the period when any bonds thereafter authorized are issued and outstanding, may have the taxable acreage of his lands fixed or adjudicated in the manner provided by 89-1404 through 89-1408 in such manner or to such extent as to reduce the acreage subject to the payment of the bonds or interest thereon or in such manner as to affect the security of the bonds or interest thereon.

History: En. Sec. 20, Ch. 157, L. 1923; amd. Sec. 23, Ch. 388, L. 1975; amd. Sec. 33, Ch. 460, L. 1977.

Amendments

The 1975 amendment substituted "the first day of January" for "the first Monday in March" near the end of subsection (1).

The 1977 amendment substituted "established under the provisions of chapter 12 of Title 89" in the first sentence for "organized hereunder"; added "except as otherwise provided by law" to the second sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

89-1811. (7239) **County treasurer as custodian of district funds.** The county treasurer of the county where the office of an irrigation district is located is the custodian of all funds belonging to the district, and he shall pay out such funds upon the order of the board of commissioners,

except payments on bonds and interest for which no order is necessary. If any portion of the funds belonging to a district has been collected for the purpose of establishing a reserve fund, the county treasurer shall pay such portion to the district on order of the district's board of commissioners who may invest the same in state or federal bonds or in savings certificates of institutions insured by the federal deposit insurance corporation. Where moneys of a district in the United States contract fund established pursuant to 89-1801(3) are in excess of those needed to pay a district's next succeeding annual contract obligation or obligations to the United States, such excess or any part thereof may, upon order of the district's board of commissioners and with the consent of the United States officer administering the contract for which the contract fund has been established, be paid to the district for use in meeting other obligations of the district. Such orders of the board of commissioners shall be signed by the president and secretary of the board and shall bear the official seal of the district.

History: En. Sec. 53, Ch. 146, L. 1909; amd. Sec. 18, Ch. 145, L. 1915; re-en. Sec. 7239, R. C. M. 1921; amd. Sec. 1, Ch. 137, L. 1971; amd. Sec. 34, Ch. 460, L. 1977.

Amendments

The 1971 amendment divided the former first sentence into the present first and fourth sentences; deleted "and payments under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States, as in section 89-1301 provided" before "for which no order shall be necessary" at the end of the first sentence; inserted new second and third sentences; deleted a final sentence reading "Where such orders are for the payment of money for construction work, the same shall be accompanied by and attached to the written estimate of the engineer in charge of such construction work"; and made minor changes in phaseology.

The 1977 amendment substituted "89-1801(3)" in the third sentence for "section 89-1809"; and made minor changes in phraseology and punctuation.

89-1812. (7240) **Collection of taxes or assessment.** On or before the third Monday in August of each year the board of commissioners shall furnish the agent of the department of revenue in each county in which any of the lands of the district are situate, a correct list of all the district lands in such county, together with the amount of the total taxes or assessments against said lands for district purposes. The agent of the department of revenue in each county shall immediately thereafter cause said assessment roll to be entered in the assessment book of said county for each year, and prior to the delivery of the assessment book to the county treasurer. The county treasurer of each county shall collect such taxes or assessments in the same manner and at the same time as county and state taxes.

History: En. Sec. 54, Ch. 146, L. 1909; amd. Sec. 2, Ch. 96, L. 1919; re-en. Sec. 7240, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1945; amd. Sec. 65, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "agent of the department of revenue" for "county assessor" in two places in order to implement article VIII, section 3 of the 1972 constitution.

89-1816. (7243) **Proceeds of sale.** Whenever any lot, tract, piece, or parcel of land included within and forming a part of any irrigation district created under the provisions of this chapter or included within any

extension of such district is sold by the treasurer of the county where such land is situated in the manner provided by law for the sale of lands for delinquent taxes for state and county purposes and taxes or assessments of the irrigation district form all or a part of the taxes for which such lands are sold, the county treasurer making such sale or sales shall place to the credit of the proper funds of such irrigation district, out of the proceeds of the sale or sales, the total tax or assessment of the irrigation district, inclusive of the interest and penalty thereon as provided for by the general laws relating to delinquent taxes for state and county purposes, and whenever any such lands are struck off at such sale to the county where they are situated pursuant to the provisions of 84-4124, the county treasurer of the county must, upon the issuance of the certificate of tax sale to the county, issue to the irrigation district, in its corporate name, a debenture certificate for the amount of taxes and assessments due to the irrigation district from the lands and premises so sold, inclusive of the interest and penalty thereon, which certificate is evidence of and conclusive of the interest and claim of the irrigation district in, to, against, and upon the lands and premises so struck off to the county at the tax sale, and after the issuance of the certificate, the sum named therein and the taxes and assessments of the district evidenced thereby shall bear interest at the rate of 1% a month from the date of the certificate until redeemed in the manner provided for by law for the redemption of the lands sold for delinquent state and county taxes or until paid from the proceeds of the sale of the lands and premises described therein in the manner provided for by law, and duplicates of such certificates so issued to the irrigation district shall be filed in the office of the county clerk and county treasurer of the county with the certificate of tax sale of the lands and premises.

History: En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7243, R. C. M. 1921; amd. Sec. 35, Ch. 460, L. 1977.

Amendments

The 1977 amendment deleted "pursuant to the provisions of the preceding section" after "Whenever" at the beginning of the section; substituted "provided by law" near the end of the section for "provided for by section 2235 of these codes"; and made minor changes in phraseology, punctuation and style.

89-1819. (7246) **Sale by county commissioners when land not redeemed.** When the lands and premises so sold for taxes and upon and against which the certificates have been issued for the taxes and assessments of the irrigation district are not redeemed within the time provided for by 84-4132, the board of county commissioners of the county, within 3 months thereafter, shall cause these lands and premises to be sold as provided for by law, and out of the proceeds of the sale, the county treasurer of the county shall pay to the holder or holders of the certificates the sum for which the same were issued, with interest as provided for to the date of the sale of the lands by the board of county commissioners, and no lands and premises so held by any county and against which the certificates provided for by this chapter have been issued may, upon such sale, be struck off or sold for a less sum than the amount of taxes and assessments of the irrigation district represented by the certificate, in-

clusive of the interest thereon, in addition to the state and county taxes, if any, against the same.

History: En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7246, R. C. M. 1921; amd. Sec. 36, Ch. 460, L. 1977.

Amendments

The 1977 amendment substituted "provided for by law" near the middle of the section for "provided for by section 2235 of these codes"; and made minor changes in phraseology, punctuation and style.

89-1832. (7250) Sale or transfer of lands.

Highway Condemnation

State highway commission acquiring land for highway purposes is not liable for assessment and taxes by irrigation district since land taken will no longer benefit from services provided by district, notwithstanding contention of district that takings so reduced total irrigable acreage of district as to increase per-acre cost of operation and maintenance of remainder. Helena Valley Irrig. Dist. v. State Highway Commission, 150 M 192, 433 P 2d 791.

CHAPTER 19—IRRIGATION DISTRICTS—LIMITATION OF INDEBTEDNESS—VALIDATION OF WARRANTS—BANKRUPTCY—FINANCIAL AID

Section 89-1905. Conveyance of property of irrigation districts to department of natural resources and conservation.

89-1901. (7251) Repealed.

Repeal

Section 89-1901 (Sec. 1, Ch. 44, L. 1915), relating to limitations upon the indebtedness of irrigation districts, was repealed by Sec. 52, Ch. 460, Laws 1977.

89-1905. Conveyance of property of irrigation districts to department of natural resources and conservation. In addition to all other powers heretofore granted any irrigation district, existing under the laws of Montana, for the purpose of securing financial aid in any form from the department of natural resources and conservation, an irrigation district may convey, assign, transfer and set over to the department all or any part of its property, including all water rights, rights of way, and easements for reservoirs, reservoir sites, canals, ditches, laterals, and head gates, as may be required by the department as a condition to furnishing such financial aid or assistance.

History: En. Sec. 1, Ch. 191, L. 1937; amd. Sec. 166, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted references to "department of natural resources and conservation" for references to "state water conservation board"; and made minor changes in phraseology.

CHAPTER 20—IRRIGATION DISTRICTS—DISSOLUTION

Section 89-2003. Contents of petition.

89-2003. (7253.2) Contents of petition. The petition of 89-2002 shall set forth the amount of the outstanding bonds, coupons, and other indebtedness, if any, together with the general description of them, showing

the amount of each described indebtedness and the ownership, so far as known, of the indebtedness. The petition shall also state the assets of the district, including any irrigation systems, dams, reservoirs, canals, franchises, water rights, and other property; and in case any proposition has been made by the holders of the indebtedness to settle the indebtedness, this proposition, together with any plan proposed to carry the proposition into execution, shall be included in the petition.

History: En. Sec. 2, Ch. 60, L. 1933; amd. Sec. 37, Ch. 460, L. 1977.

Amendments

The 1977 amendment inserted "of 89-2002" after "the petition" at the beginning of the section; and made minor changes in phraseology and punctuation.

CHAPTER 21—IRRIGATION DISTRICTS—APPEALS—MISCELLANEOUS PROVISIONS

Section 89-2107. Records—inspection—fees—reports.
89-2109. Interpretation of title.
89-2126. United States contracts—court approval required.

89-2107. (7260) **Records — inspection—fees — reports.** (1) The board of commissioners shall keep a complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the irrigation district, in the form prescribed by the department of community affairs. The department of community affairs shall prescribe forms for the use of irrigation districts and examine them as provided by law for the examination of the affairs of county officers. The books and records shall be open to the inspection of any landowner of the district the same as other public records. The failure of the board of commissioners to comply with this section is grounds for removal from office, and the county attorney of any county in which the irrigation district is situated shall prosecute ouster proceedings against any commissioner or commissioners. The cost of the proceedings is a charge against the irrigation district, and shall be paid as are other bills against the districts.

(2) If a district is appointed fiscal agent of the United States, or by the United States is authorized to make collections for or on behalf of the United States in connection with a federal irrigation project, the board of commissioners or its secretary shall at any time allow any officer or employee of the United States, when acting under the orders of the secretary of the interior, to have access to all books, records, and vouchers of the district which are in possession or control of the secretary or board.

(3) The board of commissioners shall annually file with the county clerk and recorder of the county in which the district is located, within ten (10) days after March 1 of each year, a sworn report showing the assets and liabilities of the district, the amount of money received during the preceding year, and the amount spent during that time, and shall publish the report at least once in a newspaper of the county.

(4) The department of community affairs shall notify the secretaries of the districts of the time of presenting the books and records at the courthouse for examination.

History: En. Sec. 65, Ch. 146, L. 1909; amd. Sec. 21, Ch. 145, L. 1915; amd. Sec. 1, Ch. 212, L. 1921; re-en. Sec. 7260, R. C. M. 1921; amd. Sec. 2, Ch. 195, L. 1945; amd. Sec. 4, Ch. 256, L. 1971; amd. Sec. 105, Ch. 348, L. 1974; amd. Sec. 52, Ch. 213, L. 1975.

Amendments

The 1971 amendment added subsections (4) and (5) and made a minor change in style.

The 1974 amendment substituted "department of intergovernmental relations" for "state examiner" in subsections (1) and (4); and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" throughout the section.

Repealing Clause

Section 107 of Ch. 348, Laws of 1974 read "Sections 1-201, 1-202, 1-312, 1-313, 1-317, 1-321, 1-504, 1-805, 1-926, 11-3253, 16-1225, 16-1227, 16-2925, 32-4603, 32-4604, 82-3703, 82-3704, 82-3707, 82-3709, 82A-902, 82A-903, 82A-906, R. C. M. 1947, are repealed."

89-2109. (7262) **Interpretation of title.** The object of this title is to promote the prosperity and welfare of the people of Montana through the sound management of the state's water resources, and its provisions are to be given a liberal interpretation.

History: En. Sec. 66, Ch. 146, L. 1909; re-en. Sec. 7262, R. C. M. 1921; amd. Sec. 38, Ch. 460, L. 1977.

Amendments

The 1977 amendment rewrote this section. For prior version, see parent volume.

89-2126. (7264.16) **United States contracts—court approval required.** The board of commissioners of any irrigation district, before the making of any contract with the United States hereunder, shall commence a special proceeding in the district court of the state, by which the proceedings of the board and of the district leading up to the making of any such contract and the validity of the terms thereof shall be judicially examined and approved and affirmed or disapproved and disaffirmed.

History: En. Sec. 7, Ch. 24, L. 1931; amd. Sec. 39, Ch. 460, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology and punctuation.

CHAPTER 22—DRAINAGE DISTRICTS—PETITION FOR CREATION—COURT PROCEDURE THEREON

Section 89-2203. Amendment and circulation of petition—court consideration.

89-2203. (7266) **Amendment and circulation of petition—court consideration.** No petition having as many signers as are required by 89-2201 may be declared void, but the court may at any time permit the petition to be amended in form and substance to conform to the facts, if the facts justify the organization of a drainage district. Several similar petitions for the organization of the same district may be circulated and, when filed, together shall be regarded as one petition having as many signers as there are separate adult signers on the several filed petitions who own lands within the proposed drainage district. All petitions for the organization of the district filed prior to the hearing on the petition shall be considered by the court the same as if filed with the first petitions placed on file, and the signatures thereon shall be counted in determining whether sufficient landowners have signed the petition.

History: En. Sec. 2, Ch. 129, L. 1921; re-en. Sec. 7266; R. C. M. 1921; amd. Sec. 40, Ch. 460, L. 1977.

Amendments

The 1977 amendment substituted "89-2201" in the first sentence for "this section"; and made minor changes in phraseology and punctuation.

CHAPTER 23—DRAINAGE DISTRICTS—COMMISSIONERS—ELECTION—ORGANIZATION—REPORTS

Section 89-2302. Election of commissioners—regular term of office.
89-2330. Report as to assessments.
89-2330.1. Taxpayers' approval required for assessments on improvements.
89-2330.2. Improvements not assessable by districts created for drainage only.
89-2330.3. Procedures for elections in drainage districts.
89-2332. Report as to assessments against lots and corporations.
89-2333. Report as to special benefits to corporations.
89-2334. Apportionment of costs of construction.
89-2337. Commissioners to use most feasible plan—alteration by court.
89-2338. Extension or reduction of boundaries—alteration by court.
89-2348. Construction assessments—annual installment.

89-2302. (7283) **Election of commissioners—regular term of office.** (1) The regular election of commissioners shall be held annually on the first Tuesday in April of each year; the term of office of commissioners shall commence on the first Tuesday in May following their election. At the first regular election following the organization of a district and in districts organized and in existence on March 1, 1921, and which, on petition, have been divided into divisions, at the first regular election following the date of the order making such division, there shall be elected three commissioners, one commissioner being elected from each division of which he must be an actual landowner; one of the commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the year following his election, another of the commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the second year following his election, and the third of the commissioners shall hold office until the first Tuesday in May in the third year following his election; thereafter one commissioner shall be elected each year, who shall hold office for a term of 3 years and until his successor is elected and qualified; provided, that the person elected as a commissioner in each year to succeed the commissioner whose term is then expiring must be elected as a commissioner from the same division as the commissioner whom he is to succeed.

(2) Each commissioner must be a resident of a county where a portion of the district lands are situated.

History: En. Sec. 19, Ch. 129, L. 1921; re-en. Sec. 7283, R. C. M. 1921; amd. Sec. 3, Ch. 50, L. 1925; amd. Sec. 41, Ch. 460, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

89-2330. (7307) **Report as to assessments.** Fourth. What lands, (including improvements when improvements receive benefits) easements, irrigation ditches, cities, towns, counties, individuals and other corpora-

tions and persons should be assessed for the payment of any part of the cost of constructing the proposed drains, levees or other facilities, repairs thereto, maintenance thereof and the incidental expenses attached to the establishment of such drainage district. In apportioning such costs and expenses, the following principles shall be regarded and the following classes of property, persons, corporations and municipalities shall be assessed:

All lands which are swampy, bogged or waterlogged, and will be relieved and improved by virtue of the construction of the proposed drainage system;

All lands which are becoming, or are liable to become swampy, bogged, or waterlogged, and which the construction of the proposed drainage system will prevent from being thus affected;

All lands from which surface or seepage waters will enter or can be conducted into the proposed drainage system;

All lands and improvements thereto upon which or through which, surface or seepage water will be prevented from flowing, or can be prevented from flowing, by virtue of the construction of the proposed drainage system;

All lands or improvements which will sustain any direct benefit of any kind or character whatsoever;

All railways, whether operated by steam, electricity or otherwise, whose right of way or roadbed will be benefited or can be benefited by reason of the construction of the proposed drainage system, or levee project, and all public utilities whose easements or other facilities within the district will receive benefit from the proposed work;

All owners of irrigation ditches or canals included within said district or from which water seeps, drains or wastes to, upon or through lands included within the said district;

The county or counties which the proposed drainage system traverses, or which will be benefited as to public health, convenience, welfare or improvement of any public highway;

All incorporated cities or towns, and lands included within townsites and subdivisions, in whole or in part, directly benefited by reason of the construction of the proposed drainage system;

All of the above classes of lands, improvements, railways, public utilities, irrigation ditches, counties, cities, towns, townsites and subdivisions shall be liable to assessment for the construction of the proposed drainage system in such proportions as may seem just and equitable.

The benefits to accrue from the construction of the proposed drainage system, to a railway, county, incorporated city or town, and lands included within a platted townsite or subdivision being of a different character than those to accrue to agricultural lands shall be considered in apportioning the assessment, and also, the damages and inconvenience caused by seepage and waste waters from irrigation ditches and from the higher lands, shall be considered in apportioning the assessment to them.

Provided that in the case of the construction of levees or other flood control facilities, lands and improvements which are located or constructed at an elevation which is greater than the elevation of the design flood level which said levees or other flood control facilities are designed to protect against shall not be assessed for the payment of any part of the cost of constructing the levees or other flood control facilities nor shall such lands or improvements be assessed for the payment of any part of the cost for repairs thereto, maintenance thereof nor the incidental expenses attached to the establishment of such drainage district.

The assessment against each tract, lot, easement, town, city, county, irrigation ditch, railroad, public utility, individual or corporation owner thereof which will be benefited by the proposed work or which, in any manner, contributes to the swamped, seeped, bogged or waterlogged condition of any land within said district and the proportionate share of cost of construction of the proposed drainage system, which each of them should bear shall be shown in tabular form, the columns of which shall be headed as follows: Column 1—Owners of property assessed; 2—Description of property assessed; 3—Number of acres assessed; 4—Amount of benefits assessed; 5—Number of acres taken for right of way; 6—Value of property taken; 7—Damages; 8—Assessment for costs; which shall be known as the assessment roll. Where property, persons or corporations, public or private, contribute to the damaged condition of the lands to be reclaimed, it shall not be necessary to assess in such assessment roll the benefits to be derived by or accruing to them.

History: En. Sec. 43, Ch. 129, L. 1921; re-en. Sec. 7307, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1929; amd. Sec. 1, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted the parenthetical phrase near the beginning of the first sentence; inserted "levees or other facilities" in the first sentence; inserted "and improvements thereto" in the clause relating to land over which surface or seepage water will be prevented from flowing; inserted "or improvements" in the clause relating to lands which will sustain direct benefit; added "or levee project, and all public utilities whose easements or other facilities within the district will receive benefit from the proposed work" at the end of the clause relating to railways; inserted "improvements" and "public utilities" in the clause relating to lands liable to assessment; inserted the paragraph constituting a proviso; and inserted "public utility" near the beginning of the final paragraph.

Highway Commission Property

Flood control district could assess property and improvements consisting of graded land, drainage culverts, highway bridges, roadbeds, and pavement, within district's exterior boundaries, which were owned or under lease by state highway commission. State Highway Commission v. West Great Falls Flood Control & Drainage District, 155 M 157, 468 P 2d 753, explained in 159 M 277, 496 P 2d 1143, 1151.

DECISIONS UNDER FORMER LAW

Improvements

Special assessments for flood control purposes are limited to land exclusive of improvements. In re West Great Falls Flood Control & Drainage Dist., 159 M 277, 496 P 2d 1143. (Decision prior to 1973 amendment.)

89-2330.1. Taxpayers' approval required for assessments on improvements. It shall require a vote of the persons on the assessment rolls in any existing district to make this law applicable to such districts.

History: En. Sec. 10, Ch. 409, L. 1973; amd. Sec. 1, Ch. 147, L. 1974.

Title of Act

An act to amend the statutes relating to the creation and operation of drainage districts in the state of Montana, and their adaptation to flood control projects, as contained in sections 89-2201 through 89-2825, R. C. M. 1947, so as to provide that when benefits of such projects are received by improvements to land, or facilities or structures placed on or in land, the benefits so received may be subject to assessment for district costs of the project; amending section 89-2330 to include improvements, facilities and structures as subject to assessment and clarifying the inclusion of public utilities in the payment of assessments; amending sections 89-2332, 89-2333, 89-2334, 89-2337, 89-2338, 89-2405, and 89-2410, R. C. M. 1947, so as to include improvements; and providing an effective date.

Amendments

The 1974 amendment deleted a second sentence which read: "Such election shall be held in the same manner as prescribed for drainage district elections in Title 89, chapter 23."

89-2330.2. Improvements not assessable by districts created for drainage only. Nothing in this act confers upon districts created for drainage purposes only the authority to levy assessments on benefits to improvements.

History: En. Sec. 11, Ch. 409, L. 1973.

Effective Date

Section 12 of Ch. 409, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 21, 1973.

89-2330.3. Procedures for elections in drainage districts. The election provided for by section 89-2330.1 shall be governed by the following rules.

(1) Notice of the election shall be as provided in section 89-2303 except that the form of the ballot shall be as hereinafter provided.

(2) The manner of conducting the election shall be as provided in section 89-2304.

(3) The qualifications of electors shall be as provided in section 89-2305 except that, in addition to persons holding title, or evidence of title to lands within the district, any person as therein defined who does not own land within the district but has been assessed or will have his improvements assessed under chapter 409, Laws of 1973, or who will be assessed for benefits received, shall be entitled to one (1) vote. Commissioners shall prepare a list of such persons and give them notice as provided in section 89-2303.

(4) The commissioners of any district in existence prior to the effective date of chapter 409, Laws of 1973, who wish to hold an election to determine if the district shall be governed by chapter 409, Laws of 1973, shall at any regular or special meeting adopt a resolution calling for an election to determine whether or not the voters of said district wish to be governed by chapter 409, Laws of 1973. The resolution shall contain a short summary of the changes made by chapter 409, Laws of 1973 and shall include the summary as part of the notice provided for by section 89-2303. In addition, the commission shall provide copies of chapter 409, Laws of 1973 to any person interested in obtaining a copy of the same and the notice to the persons in the district calling the election shall describe where and how copies may be obtained. The commissioners may authorize a reasonable charge for providing said copies, not to exceed twenty cents ($.20) per page.

(5) The ballot shall include the summary as provided for in the preceding paragraph and the form of the ballot shall conform, as closely as possible, to that set forth in 37-127.

(6) A simple majority of those who cast valid ballots shall determine the outcome of the election.

History: En. 89-2330.3 by Sec. 2, Ch. 147, L. 1974; amd. Sec. 27, Ch. 342, L. 1977.

Title of Act

An act to clarify the election provisions contained in section 89-2330, R. C. M. 1947; amending section 89-2330.1, R. C. M. 1947, relating to elections in drainage districts; and providing an effective date.

Amendments

The 1977 amendment substituted "37-127" for "section 37-106" at the end of subdivision (5).

Effective Date

Section 3 of Ch. 147, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

89-2332. (7309) Report as to assessments against lots and corporations. If the cost of construction of any particular part of the work so proposed to be done should be assessed upon any particular tract or tracts, lot or lots of land, including improvements where the same are benefited, or upon any corporation or corporations, the commissioners shall so specify, and in their report they shall fix and determine the sums which should be assessed against said tracts, lots, and corporations, and assess such sum against said tracts, lots, and corporations.

History: En. Sec. 45, Ch. 129, L. 1921; re-en. Sec. 7309, R. C. M. 1921; amd. Sec. 2, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted "including improvements where the same are benefited."

89-2333. (7310) Report as to special benefits to corporations. And if any individual, association of individuals or corporation would, in the judgment of said commissioners, derive special benefits from the whole or any part of such proposed work, the commissioners shall so report and assess those benefits and assess against the recipient thereof its proportionate share of the costs of said proposed work. The word "corporation," whenever in this act contained, shall be construed to include:

1 to 7. * * * [Same as parent volume.]

History: En. Sec. 46, Ch. 129, L. 1921; re-en. Sec. 7310, R. C. M. 1921; amd. Sec. 3, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted "individual, association of individuals or" near the beginning of the first sentence; and substituted "the recipient thereof" for "the same" near the end of the first sentence.

89-2334. (7311) Apportionment of costs of construction. They shall apportion and assess the part of this "cost of construction," not assessed as above, against the several benefited tracts, lots, (including improvements when the same are benefited) and easements in said drainage district, in proportion to the benefits which they have assessed against the same, by setting down opposite each tract, lot, or easement the sum which they assess against the same for construction. The assessments which together

make up the cost of construction, as above defined, are herein referred to as "assessments for construction."

History: En. Sec. 47, Ch. 129, L. 1921; re-en. Sec. 7311, R. C. M. 1921; amd. Sec. 4, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted "(including improvements when the same are benefited)."

89-2337. (7314) **Commissioners to use most feasible plan—alteration by court.** The commissioners shall not be confined to the points of commencement, routes, or termini of the drains or ditches, or the number, extent, or size of the same, or the location, plan, or extent of any levee, ditch, or other work, as proposed by the petitioners, but shall locate, design, lay out, and plan the same in such manner as to them shall seem best, to promote the public health or welfare, and to drain, or to protect the lands, including improvements, of the parties interested with the least damage and the greatest benefit to all lands affected thereby. And any plan proposed by the commissioners may, on the application of any person interested, on the hearing hereinafter provided for, or on the application of the commissioners, be altered by the court, by written order, in such manner as shall appear to the court to be just.

History: En. Sec. 50, Ch. 129, L. 1921; re-en. Sec. 7314, R. C. M. 1921; amd. Sec. 5, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted "including improvements" following "or to protect the lands" near the end of the first sentence.

89-2338. (7315) **Extension or reduction of boundaries—alteration by court.** If the commissioners find that the proposed district, as described in the petition filed, will not embrace all of the lands, including improvements, that will be benefited by the proposed work, or that it will include lands that will not be benefited and are not necessary to be included in said district for any purpose, they shall extend or contract the boundaries of the proposed district so as to include or exclude all such lands, or improvements, as the case may be; and the boundaries adopted and reported by them may, upon the hearing of their report, as hereinafter provided, upon their application, or that of any person interested, be altered by the court in such manner as shall appear to be just; provided, that the alteration of boundaries as aforesaid shall not have the effect of so far enlarging or contracting the proposed district as to render such petition void or dismissable. Said report shall be filed with the clerk of the court.

History: En. Sec. 51, Ch. 129, L. 1921; re-en. Sec. 7315, R. C. M. 1921; amd. Sec. 6, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted the references to improvements in the first sentence.

89-2348. (7325) **Construction assessments—annual installment.** At the time of the confirmation of the assessments as provided in 89-2342, the court may order the assessment for construction of new work to be paid in not more than 15 annual installments of such amounts and at such times as will be convenient for the accomplishment of the proposed work or for the payment of the principal and interest of such notes or bonds of

the district as the court grants authority to issue for the construction of new work. The court shall also by such order fix a date on which the first installment of the assessments for construction shall become due, not more than 5 years after the date of the order, and each of the installments shall draw interest at the rate fixed by the court in accordance with law from the date of the order.

History: En. Sec. 61, Ch. 129, L. 1921; re-en. Sec. 7325, R. C. M. 1921; amd. Sec. 35, Ch. 234, L. 1971; amd. Sec. 42, Ch. 460, L. 1977.

Amendments

The 1971 amendment substituted "fixed by the court in accordance with law" for "of seven per cent per annum" near the end of the section; and made a minor change in style.

The 1977 amendment inserted "as provided in 89-2342" near the beginning of the section; and made minor changes in phraseology, punctuation and style.

89-2349. (7326) **Lien of assessments—payments of assessments, etc.**

Highway Commission Property

Flood control district could assess property and improvements consisting of graded land, drainage culverts, highway bridges, roadbeds, and pavement, within exterior boundaries of district, which were owned or under lease by state highway commission. State Highway Commission v. West Great Falls Flood Control & Drainage District, 155 M 157, 468 P 2d 753, explained in 159 M 277, 496 P 2d 1143, 1151.

CHAPTER 24—DRAINAGE DISTRICTS—TAXES AND ASSESSMENTS

Section 89-2401. District taxes—how certified and collected.
89-2405. Procedure on failure to certify assessments.
89-2410. Additional assessments, procedure to levy.
89-2411. Correction of omissions.

89-2401. (7329) **District taxes—How certified and collected.** On or before the third Monday in August of each year the commissioners shall certify to the agent of the department of revenue in each county wherein the lands of the district are situate, a correct list of all the district lands in such county and the owners thereof, together with a statement of the amount of the total tax or assessment against said lands for district purposes for that year. The agent of the department of revenue in each county shall immediately thereupon cause said assessment roll to be entered in the assessment book of said county for each year and prior to the delivery of the assessment book to the county treasurer. The county treasurer of each county shall collect such taxes or assessments at the same time and in the same manner as county and state taxes.

History: En. Sec. 65, Ch. 129, L. 1921; re-en. Sec. 7329, R. C. M. 1921; amd. Sec. 1, Ch. 12, L. 1945; amd. Sec. 66, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "agent of the department of revenue in" for "county assessor of" in two places in order to implement article VIII, section 3 of the 1972 constitution.

89-2405. (7333) **Procedure on failure to certify assessments.** When commissioners shall fail to certify to the county treasurer of the proper county any one or more drainage assessments for construction or repair, or additional assessment against any lands (including improvements

where benefited) in said district, at the proper time, they may certify the same to the county treasurer at any time thereafter, whether in the same or any subsequent year.

History: En. Sec. 69, Ch. 129, L. 1921; re-en. Sec. 7333, R. C. M. 1921; amd. Sec. 7, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted the parenthetical phrase relating to improvements benefited.

89-2410. (7338) **Additional assessments, procedure to levy.** If in the first assessment for construction the commissioners shall have reported to the court a smaller sum than is needed to complete the work of construction, or if in any year an additional sum is necessary to pay the lawful indebtedness of said drainage district, further or additional assessments on the land (including improvements where benefited) and corporations benefited, proportioned on the last assessment of benefits which has been approved by the court, shall be made by the commissioners of said drainage district under the order of the court or presiding judge thereof; provided, however, that the total assessments for original construction and any additional assessments, other than for maintenance, incidental expense, and interest on bonds, shall, in no event, exceed the total assessments of benefits as provided in section 89-2330. Notice of the hearing of the application for such additional assessment shall be published at least once each week for three consecutive weeks in one newspaper published in each county in which said lands, or any part thereof, within said district are situated; which further or additional assessment may be made payable in installments as specified in section 89-2348, and shall be treated and collected in the same manner as the original assessments for construction confirmed by the court in said drainage district.

History: En. Sec. 74, Ch. 129, L. 1921; re-en. Sec. 7338, R. C. M. 1921; amd. Sec. 8, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted the parenthetical phrase relating to improvements.

Separability Clause

Section 9 of Ch. 409, Laws 1973 read "The provisions of this act shall be severable, and if any of its provisions, sections, or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

89-2411. (7339) **Correction of omissions.** Omission to assess benefits, to assess for construction, to make additional assessments, to make assessment for repairs, to award damages to any one or more tracts of land or easements in a drainage district or to assess benefits, assess for construction, assess for repairs, or make additional assessments against any corporation which should have been assessed does not affect the jurisdiction of the court to confirm the report or to render the benefits assessed, the assessments for construction, additional assessments, or assessments for repairs against other lands or assessments against any corporation voidable; but the commissioners of the drainage district shall thereafter, as soon as they discover the omission or as soon as they have notice thereof, either agree with the omitted parties upon the proper assessments and award the damages or assess such benefits, make such assessments for construction, and make such additional assessments against the omitted lands and corporations and award such damages as

are just and report the facts, together with such assessments and awards, to the court.

History: En. Sec. 75, Ch. 129, L. 1921; re-en. Sec. 7339, R. C. M. 1921; amd. Sec. 43, Ch. 460, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology and punctuation.

CHAPTER 25—DRAINAGE DISTRICTS—BONDS—REFUNDING INDEBTEDNESS

Section 89-2501. Borrowing money—procedure to issue notes or bonds.
89-2502. Refunding indebtedness of district.

89-2501. (7343) **Borrowing money — procedure to issue notes or bonds.** (1) The commissioners may borrow money not exceeding the amount of assessment for the cost of construction and additional assessments, as provided in section 89-2350, unpaid at the time of borrowing, for the construction or repair of any work which they shall be authorized to construct or repair, or for the payment of any indebtedness which they may have lawfully incurred, and may issue notes or negotiable coupon bonds on the district, bearing interest, payable semiannually and not running beyond one (1) year after the payment of the last installment of the assessment, on account of which money is borrowed, shall fall due.

(2) Before the issuance of said notes or bonds, the commissioners shall pass a resolution providing for the issuance of such notes or bonds, which said resolution shall fix the rate of interest which said notes or bonds shall bear, the time of payment and, if redeemable before maturity, the date thereof, and shall prescribe the denominations, not exceeding one thousand dollars ($1,000), and form thereof, and may provide that both the principal and interest of said notes and bonds shall be payable at some convenient banking house, or trust company's office, to be named in said notes or bonds; such notes or bonds, and the coupons attached thereto, shall bear the signatures of the president and the secretary of the drainage district; and the corporate seal of the drainage district shall be affixed to each of the notes or bonds.

(3) Upon execution, the notes or bonds shall be deposited with the county treasurer, who shall register the same in a book for that purpose, which shall show the number and amount of each note or bond, its date, the date payable and redeemable, where payable, the person to whom issued, and upon sale of the said notes or bonds, the county treasurer shall deliver the same to the person or persons to whom sold, upon their making payment for the same; said notes or bonds may be sold by the commissioners at either public or private sale, either with or without advertisement as they may deem it to the best interests of the district; said notes or bonds shall not be sold at less than ninety per cent (90%) of their face value; said notes or bonds shall not be held to make the commissioners personally liable, but shall constitute a lien upon the assessments for the repayment of the principal and interest of such notes or bonds.

(4). * * * [Same as parent volume.]

History: En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R. C. M. 1921; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971.

Amendments

The 1971 amendment, deleted "at a rate not to exceed six per centum per annum" after "bearing interest" in the latter part of subsection (1); deleted "not exceeding six per centum per annum, payable semi-annually" after "interest which said notes or bonds shall bear" near the beginning of subsection (2); and made minor changes in style.

89-2502. (7344) **Refunding indebtedness of district.** And the court may, on the petition of the commissioners, authorize them to refund any lawful indebtedness of the district by taking up and canceling all of its outstanding notes and bonds, as fast as they become due, or before, if the holders thereof will surrender the same, and issuing in lieu thereof new notes or bonds of such district, payable in such longer time as the court shall deem proper, not to exceed in the aggregate the amount of all notes and bonds of the district then outstanding, and the unpaid accrued interest thereon.

History: En. Sec. 80, Ch. 129, L. 1921; re-en. Sec. 7344, R. C. M. 1921; amd. Sec. 42, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted from the end of the section "and bearing interest not exceeding six per cent per annum."

CHAPTER 27—DRAINAGE DISTRICTS—CONTINUATION AND ALTERATION OF EXISTING DISTRICTS

Section 89-2701. Continuation of existing districts.
89-2711. Rules of practice applicable.

89-2701. (7364.2) **Continuation of existing districts.** All drain districts of the state of Montana, organized prior to March 1, 1921, and continued in existence pursuant to section 100, Chapter 129, Laws 1921, shall continue their existence as drain districts under and pursuant to all of the provisions of drainage district laws, and the commissioners of such drain districts shall have all the power and authority conferred by the drainage district laws upon the commissioners of drainage districts.

History: En. Sec. 7364B by Sec. 2, Ch. 97, L. 1931; amd. Sec. 44, Ch. 460, L. 1977.

Amendments

The 1977 amendment substituted "March 1, 1921" for "the enactment of sections 89-2201 to 89-2502 and sections 89-2801 to 89-2820, inclusive"; substituted "section 100, Chapter 129, Laws 1921" for "section 89-2820"; substituted references to drainage district laws in two places for "said sections"; and deleted "organized under such sections" at the end of the section.

89-2711. Rules of practice applicable. The same rules relative to the filing of answers and replies relative to other causes of action affecting the title to real property shall apply in actions to exclude lands from a drainage district, and all issues arising may be tried by the court without a jury.

History: En. Sec. 6, Ch. 155, L. 1941; amd. Sec. 45, Ch. 460, L. 1977.

Amendments

The 1977 amendment deleted "demurrers" after "filing of"; and deleted "which now exist" after "replies."

CHAPTER 28—DRAINAGE DISTRICTS—MISCELLANEOUS PROVISIONS

Section 89-2810. Assessments against annexed lands.

89-2810. (7354) **Assessments against annexed lands.** The commissioners shall, after the time for appeal is past, assess against each parcel, tract, and easement of the annexed lands reasonable and just benefits and shall assess against these lands for construction and repairs such sums as are just. If lands similarly situated and benefited are found in the district, the annexed lands shall be assessed a like sum of benefits and damages as the similar lands in the district to which they are sought to be annexed and a sum for construction of the work, which shall be equal to all sums assessed, for the complete construction of the drainage system in the district to which they are sought to be annexed against lands having the same assessment of benefits in the district.

History: En. Sec. 90, Ch. 129, L. 1921; re-en. Sec. 7354, R. C. M. 1921; amd. Sec. 46, Ch. 460, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology and punctuation.

89-2818. (7362) **Repealed.**

Repeal

Section 89-2818 (Sec. 98, Ch. 129, L. 1921), relating to liberal construction of the act, was repealed by Sec. 52, Ch. 460, Laws 1977.

CHAPTER 29—APPROPRIATION AND REGULATION OF GROUND WATER

Section 89-2911. Definitions.
89-2914. Designation or modification of controlled ground water areas—notice of hearings.
89-2915. Limiting withdrawals—hearing and order.
89-2916. Administrative finding of priorities.
89-2917. Scope of administrative hearing.
89-2918. Permit required to appropriate in controlled area.
89-2926. Waste and contamination of groundwater prohibited.
89-2927. Inspection—entry on premises.
89-2928.1. Well logs.
89-2929. Reports by water well drillers.
89-2930. Duty of county attorneys and attorney general.
89-2931. Rules.
89-2932. Ground water supervisors—duties.
89-2933. Investigations.
89-2934. Power to administer oaths and subpoena witnesses.
89-2934.1. Hearings before board—Administrative Procedure Act.
89-2936. Penalties.

89-2911. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Groundwater" means any fresh water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and which is not a part of that surface water. Fresh water shall be considered to be water fit for domestic, livestock, or agricultural use. The department, after notice and hearing, may fix definite standards for determining fresh water in any controlled groundwater area or subarea of the state.

(2) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(3) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(4) "Beneficial use" means a use of water for the benefit of the appropriator, other persons or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses. A use of water for slurry to export coal from Montana is not a beneficial use. Slurry is a mixture of water and insoluble matter.

(5) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or the United States or any agency thereof.

(6) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(7) "Groundwater area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of groundwater, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable. For purposes of administration, large groundwater areas may be divided into convenient administrative units known as "subareas".

(8) "Board" means the board of natural resources and conservation provided for in 82A-1509.

(9) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water, but not a private corporation, association, or group.

History: En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965; amd. Sec. 1, Ch. 307, L. 1971; amd. Sec. 40, Ch. 452, L. 1973; amd. Sec. 167, Ch. 253, L. 1974; amd. Sec. 8, Ch. 460, L. 1977.

Amendments

The 1965 amendment substituted "state water conservation board" for "state engineer" in paragraph (f).

The 1971 amendment substituted "Montana water resources board" for "state water conservation board" in subdivision (f); added a subdivision (h) defining "notice of appropriation," a subdivision (i) defining "notice of completion" and a subdivision (j) defining "declaration of vested ground water rights"; and made minor changes in punctuation and phraseology.

The 1973 amendment inserted "Unless the context requires otherwise" at the beginning of the section; deleted "or regulations issued hereunder" from the end of the preliminary clause; inserted "and which is not a part of that surface water" at the end of the first sentence in subdivision (a); substituted subdivision (d) for a subdivision defining "beneficial use" as "any economically or socially justifiable withdrawal or utilization of water"; substituted "an individual" for "any natural person" in subdivision (e); substituted "state agency, political subdivision" in subdivision (e) for "municipality, irrigation district, the state of Montana or any political subdivision or agency thereof"; substituted subdivision (f) for a subdivision defining "administrator" as "the Montana water resources board"; deleted the subdivisions (h), (i) and (j) added by the 1971 amendment; added a new subdivision (h); and made minor changes in phraseology.

The 1974 amendment substituted "department" for "administrator" in subdivision (a); rewrote subdivision (f) which defined "administrator" as the "depart-

ment of natural resources and conservation provided for in Title 82A, chapter 15"; and made a minor change in phraseology.

The 1977 amendment redesignated former subdivisions (a) through (h) as subdivisions (1) through (8); added the last two sentences of subdivision (4); added subdivision (9); and made minor changes in phraseology, punctuation and style.

89-2912, 89-2913. Repealed.

Repeal

Sections 89-2912, 89-2913 (Secs. 2, 3, Ch. 237, L. 1961; Sec. 1, Ch. 21, L. 1965; Sec. 2, Ch. 307, L. 1971), relating to appropriations of ground water, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-880 to 89-888.

89-2914. Designation or modification of controlled ground water areas —notice of hearings. Designation or modification of an area of controlled ground water use may be proposed to the board by the department on its own motion or by petition signed by at least twenty (20) or one-fourth (¼) (whichever is the lesser number) of the users of ground water in a ground water area wherein there is alleged to be factual data showing: (1) that ground water withdrawals are in excess of recharge to the aquifer or aquifers within such ground water area; (2) that excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area; or (3) that significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area.

When such a proposal is thus made, the department shall fix a time and place for a hearing, which time shall not be less than thirty (30) days from the making of the proposal. The department, or the petitioners (as the case may be) shall publish a notice of the hearing setting forth therein

(1) the names of the petitioners;

(2) the description by legal subdivisions of all lands included in the ground water area or subarea;

(3) the purpose of the hearings and

(4) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal and be fully heard. Such notice of hearing shall be published at least once in each week for three successive weeks before the date of the hearing in a newspaper of general circulation in the county or counties in which the said ground water area or subarea is located. The department or the petitioners (as the case may be) shall also cause a copy of the notice together with a copy of the petition to be served by mail, not less than twenty (20) days before the hearing on all persons, other than the petitioners, who have theretofore filed a declaration of a claim or notice of appropriation to withdraw ground water from the particular ground water area or subarea involved in the proceedings. A copy of the notice together with a copy of the proposal shall be mailed to each person at his last known address and such service shall be complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication and mailing of such notice, as pre-

scribed herein, when completed shall be deemed to be sufficient notice of such hearing to all interested persons.

History: En. Sec. 4, Ch. 237, L. 1961; amd. Sec. 168, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted department" for "administrator" throughout the section.

89-2915. Limiting withdrawals—hearing and order. (1) At the time set for the hearing the board, if it is satisfied that the notice of hearing has been duly published and mailed as required by section 89-2914, shall proceed to hear evidence and may consider information which the department has duly obtained under this act, and after the conclusion of the hearing shall make written findings and an order. If the board finds on the basis of the hearing and other information obtained by the department that the withdrawal of ground water in such area or subarea exceeds the safe annual yield of ground water as measured by the recharge of the area or subarea, it shall order the aggregate withdrawal of ground water from such area or subarea decreased so that it shall not exceed such annual yield. Except for domestic use, such decrease shall conform to the priority of the pertinent rights and shall prevail for the term of shortage in the available supply. The department may enforce the order; require persons to cease such excessive withdrawals in reverse order of their priority of rights; and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(2) The order of the board shall be published and mailed by the department in the manner and for the length of time as prescribed by section 89-2914 for the publication and mailing of the notice of hearing except that a copy of the written findings of the board shall be mailed instead of a copy of the proposal, and except further, that a copy of the order together with a copy of the written findings shall be mailed to each petitioner at his last known address. Upon publication and mailing of such order, as prescribed herein, the order shall be final and conclusive unless an appeal therefrom is taken.

(3) Once a petition has been filed and an order has been made limiting the withdrawal of ground water from a particular ground water area or subarea, as provided in this section, the board may after notice and hearing as heretofore provided in this section, modify or revoke its order upon a showing by any interested party and a finding by the board that conditions have materially changed since the prior order. While a matter is pending before the board, the department may restrict further development of the subarea.

History: En. Sec. 5, Ch. 237, L. 1961; amd. Sec. 41, Ch. 452, L. 1973; amd. Sec. 169, Ch. 253, L. 1974.

Amendments

The 1973 amendment numbered the subsections; substituted references to the board for references to the administrator in relation to quasi-legislative functions; inserted "on the basis of the hearing and other information obtained by the administrator" near the beginning of the second sentence in subsection (1); and deleted "within the time and in the manner prescribed in section 89-2920" from the end of subsection (2).

The 1974 amendment substituted "department" for "administrator" throughout the section; and made minor changes in phraseology.

89-2916. Administrative finding of priorities. (1) Any person claiming a right to withdraw ground water (whether or not from a controlled area) or the department at its discretion, may initiate a hearing by the department for the ascertainment of all existing rights to the use of the ground water in the ground area or subarea involved. The department shall produce at the hearing a map showing and describing all the lands included in the ground water area or subarea, and copies of all data upon which any prior designation or modification order was based. The waiving or assignment of rights by mutual agreement for either temporary or extended periods, shall not modify or cancel the relative priorities of the rights.

(2) Within any designated or modified controlled ground water area or subarea wherein oil and/or gas wells produce either fresh, brackish, or saline water associated with oil and gas, the volume of production of which is dependent entirely on the oil and/or gas withdrawals, such production of water shall be under the prior jurisdiction of the board of oil and gas conservation. Hearings pertaining to the production, use, or disposal of water from those wells shall be held by that board in accordance with the procedures established by that board. The department may petition the board of oil and gas conservation for hearings in regard to those operations and it shall be notified by the board of oil and gas conservation of those hearings instigated by other parties, when those hearings involve operations within a controlled ground water area or subarea.

(3) Hereafter, in a hearing for the ascertainment and finding of priorities, involving rights to the use of ground waters, all appropriators of ground water or of surface water in the particular controlled area, or subarea shall be included as parties and notified in the manner provided in section 89-2914.

History: En. Sec. 6, Ch. 237, L. 1961; amd. Sec. 170, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted the subsection designations; substituted "department" for "administrator" throughout the section; substituted references to "board of oil and gas conservation" for references to "oil and gas conservation commission" in subsection (2); and made minor changes in phraseology.

89-2917. Scope of administrative hearing. (1) In a hearing for the ascertainment and finding of priorities to the use of ground water, the department in its finding and order shall confirm, modify, alter or amend any prior order designating and modifying the boundaries of the ground water area or subarea involved, as the evidence justifies, shall determine the priority of rights and the quantity of ground water to which each appropriator, who is a party to the proceedings, is entitled in the particular ground water area or subarea, and shall find and determine any other matter necessary to the ascertainment of priorities of such existing rights to ground water. It may also determine the level below which the ground water may not be drawn by appropriators. The department shall act in administering and enforcing the order, as provided in section 89-2915.

(2) A copy of the order shall be recorded in the office of the clerk and recorder of each county in which the particular ground water area or subarea is located. If the order is not appealed, the order of the department

shall be final and conclusive when it is published and mailed as provided for orders issued under section 89-2915.

History: En. Sec. 7, Ch. 237, L. 1961; amd. Sec. 42, Ch. 452, L. 1973; amd. Sec. 171, Ch. 253, L. 1974.

Amendments

The 1973 amendment numbered the subsections; deleted "within the time limit and otherwise as is provided in section 89-2920" following "If the order is not appealed" in the second sentence of subsection (2); and made minor changes in phraseology.

The 1974 amendment substituted "department" for "administrator" throughout the section; and made minor changes in phraseology.

89-2918. Permit required to appropriate in controlled area. A person may appropriate ground water in a controlled area only by applying for and receiving a permit from the department in accordance with the Montana Water Use Act. The department may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift (in the case of pumping developments) or within a reasonable or feasible reduction of pressure (in case of artesian developments).

History: En. Sec. 8, Ch. 237, L. 1961; amd. Sec. 43, Ch. 452, L. 1973; amd. Sec. 172, Ch. 253, L. 1974.

Amendments

The 1973 amendment substituted the first sentence for six sentences requiring a permit to appropriate ground water in a controlled area and prescribing the procedure for issuance of a permit. For prior law, see parent volume.

The 1974 amendment substituted "department" for "administrator" in two instances.

89-2919 to 89-2925. Repealed.

Repeal

Sections 89-2919 to 89-2925 (Secs. 9 to 15, Ch. 237, L. 1961), relating to hearings and appeals and to change of location or abandonment, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-892, 89-894 and 89-2934.1.

89-2926. Waste and contamination of groundwater prohibited. (1) No groundwater may be wasted. The department shall require all wells producing waters which contaminate other waters to be plugged or capped. It shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be stopped when the water is not being put to beneficial use. Likewise, both flowing and nonflowing wells shall be so constructed and maintained as to prevent the waste, contamination, or pollution of groundwater through leaky casings, pipes, fittings, valves, or pumps either above or below the land surface, provided, however, in the following cases the withdrawal or use of groundwater shall not be construed as waste under this act:

(a) the withdrawal of reasonable quantities of groundwater in connection with the construction, development, testing, or repair of a well or other means of withdrawal of groundwater;

(b) the inadvertent loss of groundwater owing to breakage of a pump, valve, pipe, or fitting, if reasonable diligence is shown by the person in effecting the necessary repair;

(c) the disposal of groundwater without further beneficial use that must be withdrawn for the sole purpose of improving or preserving the

utility of land by draining the same or that must be removed from a mine to permit mining operations or to preserve the mine in good condition;

(d) the disposal of groundwater used in connection with producing, reducing, smelting, and milling metallic ores and industrial minerals or that displaced for an aquifer by the storage of other mineral resources.

(2) The department at any time may hold a hearing on its own motion or upon petition signed by a representative body of users of groundwater in any area or subarea to determine whether the water supply within such area or subarea is used in compliance with this act.

History: En. Sec. 16, Ch. 237, L. 1961; amd. Sec. 173, Ch. 253, L. 1974; amd. Sec. 47, Ch. 460, L. 1977.

Amendments

The 1974 amendment substituted references to "department" for references to "administrator" thoughout the section.

The 1977 amendment deleted "without beneficial use" at the end of the first sentence of subsection (1); inserted "must be" before "removed" in subsection (1)(c); and made minor changes in phraseology, punctuation and style.

Sealing "Shot" Hole

Sealing "shot" holes by pouring excess cuttings down into the holes and plugging the orifices by forcing an aluminum plug into the holes so that the tops of the plugs were below plow depth, did not violate this section when the holes were only four and one-half inches in diameter and expert testimony indicated that seismographic holes tended to slough, cave and release lateral support from materials around the hole causing pressure from the weight of the earth above to force the material towards the center, sealing the hole. Haynie v. Northern Pacific Ry. Co., 158 M 247, 490 P 2d 715.

89-2927. Inspection—entry on premises. The department, the state bureau of mines and geology, or the department of health and environmental sciences, may enter on the property of any appropriator, where a well is situated, at any reasonable hour of the day, for the purpose of investigating any matters in connection with this act.

History: En. Sec. 17, Ch. 237, L. 1961; amd. Sec. 174, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "The department * * * may enter" for "The administrator or any assistant, any representative of the state bureau of mines and geology or the state board of health, shall have the right of entry."

89-2928.1. Well logs. Within sixty (60) days after any well is completed, the driller shall file with the department a well log report on a form provided by the department at its offices and at the offices of the county clerks and recorders. The department may return the report for refiling if it is incomplete or incorrect. The department shall provide a copy of the complete and correct well log to the Montana bureau of mines and geology.

History: En. 89-2928.1 by Sec. 44, Ch. 452, L. 1973; amd. Sec. 175, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "administrator" throughout the section.

89-2929. Reports by water well drillers. The forms, reports, and information required to be filed by this act are in addition to all other reports and information which the drillers of water wells in the state are required by law to file with agencies of the state.

History: En. Sec. 19, Ch. 237, L. 1961; amd. Sec. 48, Ch. 460, L. 1977.

Amendments

The 1977 amendment substituted "filed" for "filled"; and made minor changes in phraseology and punctuation.

89-2930. Duty of county attorneys and attorney general. The county attorneys and the attorney general of the state shall perform such legal services and bring such legal proceedings in carrying out the purpose of this chapter within their respective counties as the department may request. The department may also employ legal counsel to enforce this chapter and to conduct proceedings under it.

History: En. Sec. 20, Ch. 237, L. 1961; amd. Sec. 176, Ch. 253, L. 1974; amd. Sec. 10, Ch. 460, L. 1977.

Amendments

The 1974 amendment substituted "department" for "administrator."

The 1977 amendment added the last sentence; and made minor changes in phraseology.

89-2931. Rules. The board may prescribe and the department shall enforce reasonable rules concerning and providing for inspection and entry for that purpose by the department; the circumstances under which the construction of weirs or other measuring devices may be required; and such other similar matters as are required by, and consistent with the administration of this act.

History: En. Sec. 21, Ch. 237, L. 1961; amd. Sec. 177, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "The board may prescribe * * * reasonable rules" for "The administrator may prescribe and enforce reasonable rules and regulations" and substituted "department" where used the second time for "administrator or his official representative."

89-2932. Ground water supervisors—duties. The department may appoint one or more ground water supervisors for each designated controlled area, and may appoint one or more ground water supervisors at large. Within their respective jurisdictions and under the direction of the department, the ground water supervisors and supervisors at large shall supervise the withdrawal of ground water and the carrying out of orders issued by the department.

History: En. Sec. 22, Ch. 237, L. 1961; amd. Sec. 178, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "administrator" throughout the section.

89-2933. Investigations. (1) The department shall compile information for the purpose of enabling it to comply with this act. In compiling this information, the department shall make use of investigations, technical personnel, surveys, and information available from the Montana bureau of mines and geology, the United States geological survey, the board of oil and gas conservation, the department of health and environmental sciences, and any other private, state, or governmental agency.

(2) In addition to the foregoing, the department may request specific investigations by the preceding public agencies where desired information is not otherwise available.

History: En. Sec. 23, Ch. 237, L. 1961; amd. Sec. 179, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted the subsection designations; substituted "department" for "administrator" throughout the section; substituted "the board of oil and gas conservation, the department of health and environmental sciences" in subsection (1) for "the Montana oil and gas conservation commission, the state board of health"; and made minor changes in phraseology.

89-2934. Power to administer oaths and subpoena witnesses. The department may administer oaths and issue subpoenas for the attendance of witnesses, in any investigation, hearing or proceeding held by it.

History: En. Sec. 24, Ch. 237, L. 1961; amd. Sec. 180, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "administrator"; and made minor changes in phraseology and punctuation.

89-2934.1. Hearings before board—Administrative Procedure Act. (1) A person who is aggrieved by a final decision of the department under this chapter, is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act [82-4201 to 82-4225] governs administrative proceedings under this chapter.

History: En. 89-2934.1 by Sec. 45, Ch. 452, L. 1973; amd. Sec. 181, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "administrator" in subsection (1).

Repealing Clause

Section 46 of Ch. 452, Laws 1973 read "Sections 89-121 through 89-123, 89-801 through 89-804, 89-807 through 89-816, 89-829 through 89-842, 89-844 and 89-845, 89-847 through 89-855, 89-857 through 89-864, 89-2912, 89-2913, 89-2919 through 89-2925, 89-2935, R. C. M. 1947, are repealed."

Separability Clause

Section 47 of Ch. 452, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

89-2935. Repealed.

Repeal

Section 89-2935 (Sec. 25, Ch. 237, L. 1961), relating to filing fees, was repealed by Sec. 46, Ch. 452, Laws 1973.

89-2936. Penalties. Any person who violates or refuses or neglects to comply with any provision of this act, or of any order, rule or regulation promulgated by the department or the board, or who commits waste, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars ($25) nor more than two hundred and fifty dollars ($250) for each offense.

History: En. Sec. 26, Ch. 237, L. 1961; amd. Sec. 182, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department or the board" for "administrator"; and made minor changes in style.

CHAPTER 32—COLUMBIA INTERSTATE COMPACT—RATIFICATION

(Repealed—Section 1, Chapter 464, Laws of 1977)

89-3201 to 89-3207. Repealed.

Repeal

Sections 89-3201 to 89-3207 (Secs. 1 to 7, Ch. 85, L. 1961; Sec. 1, Ch. 196, L. 1963; Sec. 59, Ch. 439, L. 1975), relating to the Columbia Interstate Compact, were repealed by Sec. 1, Ch. 464, Laws 1977.

CHAPTER 33—COUNTY AND MUNICIPAL PARTICIPATION IN FLOOD CONTROL AND WATER CONSERVATION

Section 89-3301. Participation in projects authorized—work which may be undertaken.
89-3302. Water conservation and flood control activities declared public purpose.
89-3303. Acquisition of property—condemnation.
89-3304. Acceptance of aid—assumption of remaining cost.
89-3305. Right of way and construction costs.
89-3306. Direction of project.
89-3307. Contributions to right of way costs—agreement to maintain works.
89-3308. Street or road fund used.
89-3309. Levy of special assessment—apportionment to property benefited.
89-3309.1. Charges to be levied.
89-3310. Contracts for use of railroads and highways.
89-3311. Division of work into parts—separate proceedings for parts.
89-3312. Indebtedness and bonds—bond election—special assessment to pay indebtedness.
89-3313. Powers additional.
89-3314. Provisions to provide alternative method.

89-3301. Participation in projects authorized—work which may be undertaken. Cities, towns or counties, through their councils, boards of county commissioners, or other governing body, are hereby empowered, either individually or jointly, to engage or participate in the establishment of water conservation and flood control projects within the limits of such city, town or county for the protection or reclamation of property situated therein from floods or high waters and to protect property therein from the effects of flood water, and for the conservation, development, storage, distribution, drainage and utilization of water for purposes beneficial to the district, such purposes to include but not be limited to industrial and municipal water supply, recreation and wildlife, irrigation, streamflow stabilization, household and domestic use and pollution abatement, whenever the establishment of such a water conservation and flood control system shall, in the judgment of the city council, board of county commissioners or other governing body, be conducive to public convenience and welfare. Such cities, towns or counties may in accordance with the provisions of this act individually, jointly or severally, or in co-operation with the federal or state government or any department or agency thereof, and with each other, deepen, widen, straighten, alter, change, divert or otherwise improve the watercourses within or without their limits, by constructing levees, dikes, embankments, structures, impounding reservoirs or conduits, and improve, widen and establish streets, alleys and boulevards across and adjacent to the abandoned or new channel or conduit and provide for the payment of the cost and maintenance of such project or projects under the terms of this act. The boundaries of a project once

established shall not be extended without the vote of a majority of the electors residing in the area proposed to be annexed. Such electors to be determined and such election to be held in accordance with the provisions of section 89-3312 of this act.

History: En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967.

Title of Act

An act authorizing cities, towns or counties to participate in flood control or flood prevention projects, to acquire property for such purpose, to accept federal aid for such purpose, providing for division of expenses in connection with such purpose, providing for assessments, permitting the cities, towns or counties to enter into certain contracts in pursuance of such purpose, authorizing the issuance of general obligation bonds for such purpose upon an election thereon, authorizing the state water conservation board to co-ordinate such activities when two or more counties are involved and for that purpose appropriating to the state water conservation board the sum of one dollar ($1) from the general fund of the state of Montana for the biennium commencing July 1, 1965, containing a repealing clause and containing a savings clause.

Amendments

The 1967 amendment substituted "water conservation and flood control projects" for "a flood control or flood prevention project" after "establishment of" in the first sentence, inserted "and for the conservation, development, * * * pollution abatement" before "whenever" and inserted "water conservation and" after "such a"; inserted "or state" after "federal" in the second sentence, substituted "such project or projects" for "such flood control project" before "under the terms" near the end of the second sentence and added the last sentence.

89-3302. Water conservation and flood control activities declared public purpose. Such water conservation and flood control activities, their establishment, construction, operation and maintenance as authorized by this act are declared to be for the protection of the tax base of the city, town or county, for the protection of public roads, lands and improvements, and for the protection of the public health, sanitation, safety and for improvement of the general welfare.

History: En. Sec. 2, Ch. 272, L. 1965; amd. Sec. 2, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation and" after "Such" at the beginning of the section and inserted "for improvement of the" before "general welfare" at the end of the section.

89-3303. Acquisition of property—condemnation. Cities, towns and counties may acquire by gift, purchase or condemn and appropriate private property within the limits of the project, including the right to cross railroad right of way and property and highway right of way and property, so as not to impair the previous public use, as may be necessary to carry into effect the provisions of this act, and to provide an outlet for the watercourses, either natural or artificial, which may be deepened, widened, straightened, altered, changed, diverted or otherwise improved under the provisions of this act. All provisions of the laws of the state of Montana relating to the condemnation of lands for public purposes shall apply to the provisions thereof in and so far as applicable.

History: En. Sec. 3, Ch. 272, L. 1965; amd. Sec. 3, Ch. 284, L. 1967.

Amendments

The 1967 amendment deleted "flood control" before "project."

89-3304. Acceptance of aid—assumption of remaining cost. Cities, towns and counties may in accordance with the provisions of this act ac-

cept funds and property or other assistance, financial or otherwise, from federal, state and other public or private sources for the purpose of aiding the construction and maintenance of water conservation and flood control projects; and co-operate and contract with the state or federal government, or any department or agency thereof, in furnishing assurances and meeting local co-operation requirements of any project involving control, conservation and use of water.

History: En. Sec. 4, Ch. 272, L. 1965; amd. Sec. 4, Ch. 284, L. 1967.

Amendments

The 1967 amendment substituted "funds and property or other assistance * * * and use of water" for "federal aid in the doing of the acts provided in sections 1 and 3 hereof, and may assume such portion of the cost thereof not discharged by such federal aid" after "this act accept."

89-3305. Right of way and construction costs. The cost of all right of way acquired by purchase or condemnation may be borne by the city, town or county together with any other property rights which may be required in furtherance of such projects, and the work of actual construction and the cost thereof may be borne by the federal government.

History: En. Sec. 5, Ch. 272, L. 1965.

89-3306. Direction of project. This act contemplates that the actual direction of the project and the doing of the work in connection therewith is assumed by either the state or the federal government and the city, town or county provides and assumes the cost of necessary right of way over and above such contributions in that regard as the federal government may choose to make. Under such limitation all appropriate portions of this act shall apply.

History: En. Sec. 6, Ch. 272, L. 1965; amd. Sec. 5, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "either the state or" after "assumed by."

89-3307. Contributions to right of way costs—agreement to maintain works. Cities, towns and counties in furtherance of such water conservation and flood control projects may accept contributions to enable them to pay for necessary right of way. They may also enter into agreement with the federal government to maintain levees, dikes, or other construction and to do all other acts required by the federal government in maintaining the work when completed.

History: En. Sec. 7, Ch. 272, L. 1965; amd. Sec. 6, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation and" before "flood control."

89-3308. Street or road fund used. The council, board or governing body shall have power to allocate a portion of the street or road fund, as the case may be, for the purpose of acquiring right of way or the operation and maintenance of completed projects.

History: En. Sec. 8, Ch. 272, L. 1965; amd. Sec. 7, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "operation and" before "maintenance"; and deleted "flood control" before "projects."

89-3309. Levy of special assessment—apportionment to property benefited. Any city, town or county that shall establish a water conservation or flood control system or both pursuant to this act may for the purpose of providing funds for the operation and maintenance thereof levy an annual special assessment against all real property in the area benefiting from such system. Such special assessment shall be levied against each lot or parcel of land in the benefited area for that portion of the money required which its area bears to the total area of all of the lands to be assessed; or said assessment may, at the option of the governing body of the city, town or county, as the case may be, be based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land exclusive of improvements thereon, within said benefited area, in which case each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed. Provided, however, that where the benefited area lies in more than one county or lies both within a county and also a city or town, the same method of assessment shall be used for each governing body. Such special assessments for the operation and maintenance of any system authorized by this act shall be levied as are other special improvement levies as required by law.

History: En. Sec. 9, Ch. 272, L. 1965; amd. Sec. 8, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation or" before "flood control"; inserted "or both" before "pursuant"; substituted the present second and third sentences for former second sentence which read, "Such special assessment shall be apportioned among the several lots or parcels of real property in the benefited area in proportion to the benefit conferred"; and, in the last sentence deleted "flood control" before "system."

89-3309.1. Charges to be levied. Cities, towns and counties may for the purpose of providing funds for the operation and maintenance of completed projects, fix, maintain and collect fees, rents, tolls and other charges for services rendered or facilities provided. In fixing such rate, fee, toll or rent the governing body shall charge for water furnished for household use, domestic use, irrigation use, industrial use, municipal use and for water used for streamflow stabilization a fee sufficient to pay the proportionate share of the repairs, maintenance and operating expenses as such use bears in economic value, such economic value to be determined by the governing body, to the total economic value of the total use of said facilities of the project or projects. For the benefits received by areas within the boundaries of the project or projects for flood prevention, flood control and pollution abatement, the governing body shall determine a reasonable valuation or charge, which valuation or charge shall be certified by them to the county commissioners prior to the time general taxes are levied and assessed and it shall be the obligation of the county commissioners to levy a special assessment as provided for in section 89-3309 against such area or areas sufficient to provide revenues for the repairs, maintenance and operating expenses of the project. For recreation use the governing body shall first determine the share of the costs of operation, repairs and depreciation to be charged against such uses, and from this figure shall subtract the estimated amount of fees and tolls collected for

such uses; the deficiency, if any, shall be certified to the county commissioners in the same way as the charges for flood prevention, flood control, etc. and special assessments be levied by the county commissioners in the manner set out herein. The council, board of county commissioners or other governing body shall also have the authority to receive and accept appropriations and contributions from any source of either money or property or other things of value, to be held, used, and applied for the purposes in this act provided.

History: En. Sec. 9, Ch. 284, L. 1967.

Title of Act

An act amending sections 89-3301, 89-3302, 89-3303, 89-3304, 89-3306, 89-3307, 89-3308, 89-3309, 89-3310, 89-3311, R. C. M. 1947, relating to city and county flood control projects, to authorize multiple use water projects by cities and counties; to change the method of levying the special assessment to pay for such projects; authorizing cities and counties to charge fees for services and facilities provided by such projects; and providing an effective date.

89-3310. Contracts for use of railroads and highways. A city, town or county may contract with a railroad company or with the department of highways for the use of railroad or highway rights of way and embankments, and other railroad or highway property which can be utilized by the city, town or county for the purpose of water conservation or flood control or protection as part of its water conservation or flood control system, or both, for a period not exceeding ninety-nine (99) years.

History: En. Sec. 10, Ch. 272, L. 1965; amd. Sec. 10, Ch. 284, L. 1967; amd. Sec. 207, Ch. 316, L. 1974.

Amendments

The 1967 amendment inserted "water conservation or" before "flood control" wherever found in this section; inserted "or both" before "for any period."

The 1974 amendment substituted "department of highways" for "state highway commission"; and made minor changes in phraseology.

89-3311. Division of work into parts—separate proceedings for parts. Whenever any city, town or county has begun a water conservation or flood control system, or both, under this act, the council, board or other governing body shall have the power to divide the work into parts, sections or districts; to omit parts of said work and to contract for any part or section separately and proceed therewith the same as if the entire work or improvements were contracted for, done or made.

History: En. Sec. 11, Ch. 272, L. 1965; amd. Sec. 11, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation or" before "flood control"; and inserted "or both" before "under this act."

89-3312. Indebtedness and bonds—bond election—special assessment to pay indebtedness. Cities, towns and counties are hereby authorized to contract indebtedness and to issue special improvement district or rural improvement district bonds to provide funds for the payment of the cost of improvements contemplated by this act by following the following procedures:

The governing body of the city, town or county may call a special election to vote upon the proposition of issuing said bonds or may submit the proposition as a special question at a regular municipal or general

election. The notice of the election and the election itself shall be carried out in accordance with sections 11-2201 through 11-2288, R. C. M. 1947, as amended, as to cities, and in accordance with sections 16-1601 through 16-1638, R. C. M. 1947, as amended, as to the counties.

Tax assessments for the payment of said bonds shall be levied in accordance with sections 11-2201 through 11-2288 and sections 16-1601 through 16-1638, R. C. M. 1947, as amended, as to cities and counties, respectively.

History: En. Sec. 12, Ch. 272, L. 1965; amd. Sec. 1, Ch. 239, L. 1971.

Amendments

The 1971 amendment substituted "special improvement district or rural improvement district bonds" for "general obligation bonds" in the first paragraph; substituted "sections 11-2201 through 11-2288" for "11-2301 through 11-2330" in the second paragraph; substituted "sections 16-1601 through 16-1638" for "16-2002 through 16-2050" in the second paragraph; substituted "Tax assessments" for "Taxes" at the beginning of the third paragraph; substituted "sections 11-2201 through 11-2288 and sections 16-1601 through 16-1638" for "11-2301 through 11-2330 and sections 16-2002 through 16-2050" in the third paragraph; deleted the former second sentence of the third paragraph reading, "The indebtedness incurred for the purposes herein provided shall not be considered an indebtedness for general or ordinary purposes and shall not be charged against or counted as part of the levies available for general or ordinary purposes"; and made minor changes in style.

89-3313. **Powers additional.** This act, and each section thereof, shall be construed as granting additional power without limiting the power already existing in cities, towns and counties.

History: En. Sec. 13, Ch. 272, L. 1965.

Appropriation

Section 14 of Ch. 272, Laws 1965, appropriated $1.00 to the water conservation board from the general fund for the biennium commencing July 1, 1965.

Separability Clause

Section 15 of Ch. 272, Laws 1965 read "If a part of this act shall be declared to be invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is declared to be invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 16 of Ch. 272, Laws 1965 repealed all acts and parts of acts in conflict therewith.

89-3314. **Provisions to provide alternative method.** The provisions of this chapter and the methods of organization of water conservation and flood control projects are hereby declared to be an alternative method to any other method proposed by any law now in existence or hereafter enacted for the creation of such projects and it is hereby declared that no provision hereof shall be amended or repealed by implication or otherwise as being in conflict with any existing law or future enactment unless specifically so declared by the legislature.

History: En. Sec. 12, Ch. 284, L. 1967.

Effective Date

Section 13 of Ch. 284, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

CHAPTER 34—CONSERVANCY DISTRICTS

Section 89-3401. Organization of conservancy districts and construction of works a public use—benefits.
89-3402. Purpose of act.
89-3403. Definitions.

89-3404. Preliminary survey—petition.
89-3405. Action by water board upon receipt of request.
89-3406. Hearing by department.
89-3407. Feasibility study and report—adjustment of proposed boundaries.
89-3408. Procedure for organization of district.
89-3409. Court hearing on organization petition—election—voters needed to organize—no jurisdiction to determine priority of appropriation.
89-3410. Filing of documents after organization.
89-3411. Reimbursement for expenses of organizing election.
89-3412. Appointment of directors—terms of office—vacancies—first annual meeting—corporate surety bond.
89-3413. Selection of officers—bylaws and rules—minutes—regular and special meetings.
89-3414. Powers of directors.
89-3415. Participation in federal programs.
89-3416. Assessments.
89-3417. Notice of public budget hearing.
89-3418. Directors to inform county assessor and treasurer annually concerning budget, special assessments and realty—multi-county districts.
89-3419. Collection of special assessments—multi-county districts—investment of surplus funds—interest.
89-3420. Condemnation authorized—water rights.
89-3421. Annual written report of directors' activities.
89-3422. Department of community affairs to examine financial records—report—fee.
89-3423. Persons entitled to vote.
89-3424. Election procedures.
89-3425. Challenging voters.
89-3426. Issuance of bonds—maximum term—sale as single issue of multi-purpose bonds.
89-3427. Determination of amount of bonds to be issued.
89-3428. Resolution for issuance of bonds—notice—election.
89-3429. Approval of bond issue at election—authorizes assessments—recording of election results—validity of election—single proposition.
89-3430. Resolution providing for form, execution and issuance of bonds—bids—private sale—sale price—rejection of bids.
89-3431. Comparable to municipal bonds—exempt from taxation.
89-3432. Interim receipts—negotiability.
89-3433. Registration of bonds—copy to be furnished county treasurer.
89-3434. Deposit of sales proceeds—disposition—investment.
89-3435. Refunding bonds authorized—redemption.
89-3436. Fund for retirement of bonds—investment and disbursement.
89-3437. Revolving funds—purpose—excess money—funds deposited with county treasurer.
89-3438. Petition for merger of districts—hearing and notice—merger into new district—inclusion in another district—majority of electors may kill merger by petition—existing obligations.
89-3439. Procedure for annexing realty.
89-3440. Pre-annexation bonds not lien without prior agreement.
89-3441. Exclusion of territory from district—procedure.
89-3442. Procedure for dissolution of district.
89-3443. Dissolution election—majority approval required.
89-3444. Submission of termination plan—termination by directors or receiver—court order—retention of jurisdiction.
89-3445. Appointment of receiver—directors' authority ceases—assessments by receiver—annual assessments—disposition of assessments.
89-3446. Entry of dissolution order—certified copy.
89-3447. County general funds to receive funds remaining after dissolution—proportion.
89-3448. No power to generate, distribute or sell electric energy.
89-3449. Other agencies not affected.

89-3401. Organization of conservancy districts and construction of works a public use—benefits. To provide for the conservation and development of the water and land resources of the state of Montana,

conserve Montana's water for utilization for beneficial purposes within the state, and provide for the greatest beneficial use of water within this state, the organization of conservancy districts and the construction of works as defined by the act are a public use and will:

(1) be essentially for the public benefit and advantage of the people of Montana;

(2) benefit all industries of the state;

(3) encourage economic growth;

(4) indirectly benefit the state by increasing property valuations;

(5) directly benefit municipalities by providing adequate supplies of water for domestic uses;

(6) directly benefit lands irrigated or drained by works constructed;

(7) directly benefit lands now irrigated by stabilizing the flow of water in streams and by increasing the flow and return flow of water to those streams;

(8) enhance fish and wildlife habitat;

(9) improve recreational facilities; and

(10) promote the comfort, safety, and welfare of the people of Montana.

History: En. Sec. 1, Ch. 100, L. 1969.

Title of Act

An act providing for the conservation and development of water and land resources of Montana through the creation of conservancy districts.

89-3402. Purpose of act. The purpose of this act is to enable the formation of conservancy districts, comprised of area in one or more counties to promote the following purposes:

(1) prevent and control floods, erosion and sedimentation;

(2) provide for regulation of stream flows and lake levels;

(3) improve drainage and to reclaim wet or overflowed lands;

(4) promote recreation;

(5) develop and conserve water resources and related lands, forest, fish and wildlife resources;

(6) further provide for the conservation, development, and utilization of land and water for beneficial uses including, but not limited to, domestic water supply, fish, industrial water supply, irrigation, livestock water supply, municipal water supply, recreation, and wildlife.

History: En. Sec. 2, Ch. 100, L. 1969.

89-3403. Definitions. As used in this act, unless the context clearly indicates otherwise:

(1) "district" means a conservancy district, which is a public corporation and a political subdivision of the state;

(2) "directors" means the board of directors of a conservancy district;

(3) "elector" means a person qualified to vote under 89-3423;

(4) "court" means the district court of the judicial district in which the largest portion of the taxable valuation of real property of the proposed district is located and within the county in which the largest portion of the taxable valuation of real property of the proposed district is located within the judicial district;

(5) "person" means a natural person; firm; partnership; cooperative; association; public or private corporation, including the state of Montana or the United States; foundation; state agency or institution; county; municipality; district or other political subdivision of the state; federal agency or bureau; or any other legal entity;

(6) "department" means the department of natural resources and conservation provided for in Title 82A, chapter 15;

(7) "board of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located;

(8) "works" means all property, rights, easements, franchises, and other facilities including but not limited to land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, waterworks systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution;

(9) "cost of works" means the cost of construction, acquisition, improvement, extension, and development of works, including financing charges, interest, and professional services;

(10) "applicants" means any person residing within the boundaries of the proposed district making a request for a study of the feasibility of forming a conservancy district;

(11) "notice" means publication at least once each week for 3 consecutive weeks in a newspaper published in each county or, if no newspaper is published in a county, a newspaper of general circulation in the county or counties in which a district is or will be located. The last published notice shall appear not less than 5 days prior to any hearing or election held under this act;

(12) "owners" are the person or persons who appear as owners of record of the legal title to real property according to the county records whether such title is held beneficially or in a fiduciary capacity, except that a person holding a title for purposes of security is not an owner nor may he affect the previous title for purposes of this act;

(13) "taxable valuation" is the value as defined in 84-401 and does not mean assessed valuation.

History: En. Sec. 3, Ch. 100, L. 1969; amd. Sec. 183, Ch. 253, L. 1974; amd. Sec. 71, Ch. 566, L. 1977.

Amendments

The 1974 amendment rewrote subdivision (6) which defined the water board as the "state water resources board"; made a minor change in style; and corrected two errors in spelling.

The 1977 amendment substituted "value as defined in 84-401" in subdivision (13) for "valuation determined according to section 84-302"; and made minor changes in phraseology, punctuation and style.

89-3404. Preliminary survey—petition. (1) To request a preliminary survey for a proposed conservancy district, the applicants shall present a written petition to the department.

(2) The petition shall:

(a) be signed by at least ten per cent (10%) of the registered voters residing within the boundaries of the proposed conservancy district;

(b) generally describe the proposed boundaries of the district;

(c) specify the purpose or purposes of the district;

(d) list the works contemplated;

(e) request that a preliminary survey be initiated.

(3) The department may initiate a preliminary survey without any prior written petition.

History: En. Sec. 4, Ch. 100, L. 1969; amd. Sec. 1, Ch. 19, L. 1973.

Amendments

The 1973 amendment substituted "petition" for "request" throughout the section; substituted "department" for "water board" throughout the section; inserted a new subdivision (2)(a); redesignated former subdivisions (a), (b) and (c) of subdivision (2) as (b), (c) and (d); inserted a new subdivision (2)(e); and inserted "written" in subdivision (3).

89-3405. Action by water board upon receipt of request. (1) Sooner than eleven (11) days after the request is received, the department shall acknowledge the request.

(2) The department shall itself, or through co-operating agencies, or together with co-operating agencies:

(a) consult with the board of supervisors and all persons who may participate in the proposed project;

(b) conduct a preliminary survey of the proposed district;

(c) estimate costs of works, maintenance, and operation;

(d) determine sources of financing;

(e) reach a tentative decision on the feasibility, desirability and compatability with the state water plan of the proposed district;

(f) adjust the boundaries of the proposed district to improve the feasibility, desirability or consistency with the state water plan;

(g) sooner than one (1) year after receipt of the request, send a report of the preliminary survey to the applicants, the board of supervisors, department of fish and game, department of health and environmental sciences, and other affected state and federal resource agencies for their comments.

History: En. Sec. 5, Ch. 100, L. 1969; amd. Sec. 1, Ch. 302, L. 1971; amd. Sec. 184, Ch. 253, L. 1974; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1971 amendment increased from six months to one year the time allowed by subdivision (2)(g) for the report of preliminary survey.

The 1974 amendment substituted "department" for "water board" in subsections (1) and (2); deleted "state soil conservation committee" after "fish and game commission" in subdivision (2)(g); and substituted "department of health and environmental sciences" for "state board of health" in subdivision (2)(g).

89-3406. Hearing by department. (1) Upon receipt of the preliminary survey report the applicants, or any one of them, may request the department to hold a hearing. The department shall hold the hearing sooner than

sixty-one (61) days after receipt of the request. Notice of the hearing shall be given in accordance with section 89-3403 (11).

(2) If the department itself initiated the preliminary survey, it may hold a hearing without being requested to do so.

History: En. Sec. 6, Ch. 100, L. 1969; amd. Sec. 185, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "water board" throughout the section; and made minor changes in phraseology and style.

89-3407. Feasibility study and report—adjustment of proposed boundaries. After the hearing, the applicants, or any one of them, may request the department to prepare a detailed feasibility study of the proposed district. If the department concludes that the proposed district is feasible, desirable, and consistent with the state water plan, it shall prepare a feasibility report, and sooner than one (1) year after receipt of the request, send copies to the applicants, if any, the department of fish and game, department of health and environmental sciences, and other affected state and federal water resource agencies. For good cause shown based upon the actual technical problems in completing the report, the department may use necessary additional time to complete and distribute the report. The detailed feasibility report shall describe the proposed works and contain an estimate of the cost of the works, the means of financing, and the estimated costs of operation and maintenance. The department may adjust the boundaries of the proposed district to improve the feasibility, desirability and consistency with the state water plan, and to exclude land which would receive no direct or indirect benefits from the proposed district.

History: En. Sec. 7, Ch. 100, L. 1969; amd. Sec. 1, Ch. 303, L. 1971; amd. Sec. 186, Ch. 253, L. 1974; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1971 amendment increased the time allowed for the feasibility report by the second sentence from six months to one year.

The 1974 amendment substituted "department" for "water board" throughout the section; deleted "state soil conservation committee" after "fish and game commission"; and substituted "department of health and environmental sciences" for "state board of health" in the second sentence.

89-3408. Procedure for organization of district. If in the opinion of the department the feasibility study shows that a district is feasible and consistent with the state water plan, the procedure for organization is:

(1) the department shall file a petition requesting organization with the court;

(2) the petition shall:

(a) state the name of the proposed district;

(b) give a legal description of the boundaries of the proposed district, excluding therefrom lands which would receive no direct or indirect benefits from the proposed district;

(c) describe the purposes of the district;

(d) describe the works;

(e) indicate the estimated cost of works, means of financing, and estimated costs of operation and maintenance;

(f) list the taxable valuation of real property in the proposed district, which must be one hundred thousand dollars ($100,000) or more;

(g) describe the means of repaying capital costs;

(h) propose the persons who should be represented and the number of directors.

(3) The petition shall be signed by owners of at least fifty-one per cent (51%) of the land outside the limits of an incorporated municipality, and not fewer than five per cent (5%) or one hundred (100), whichever is the lesser, of the persons who would qualify as electors within an incorporated municipality.

History: En. Sec. 8, Ch. 100, L. 1969; amd. Sec. 187, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "water board" in the introductory clause and in subsection (1).

89-3409. Court hearing on organization petition — election — voters needed to organize—no jurisdiction to determine priority of appropriation. (1) Upon receipt of a petition for organizing a district, the court shall give notice and hold a hearing on the petition. If the courts shall find that the prayer of the petition should be granted, it shall:

(a) make and file findings of fact specifying those lands that will be directly or indirectly benefited by the proposed district, and exclude those lands which will not be so benefited;

(b) make an order fixing the time and place of an organizing election;

(c) give notice of an election in the way provided in section 3, subsection (11) [89-3403 (11)];

(d) provide for election judges and fix their compensation;

(e) fix the polling place or places as necessary;

(f) order the county clerk to provide pollbooks, ballots, poll lists and other necessary election supplies;

(g) provide for canvassing the results;

(h) declare the results;

(i) order and decree the district organized if the requisite number of eligible electors vote in favor of organization.

(2) In order for the district to be organized, fifty-one per cent (51%) or more of the eligible electors must vote in the election, and a majority of those voting must vote in favor of organization.

(3) This act shall not confer upon the court jurisdiction to hear, adjudicate, and settle questions concerning the priority of appropriation of water between districts and other persons. Jurisdiction to hear and determine priority of appropriation, and questions of right growing out of, or in any way connected with a priority of appropriation,

are expressly excluded from this act and shall be determined as otherwise provided by the laws of Montana.

History: En. Sec. 9, Ch. 100, L. 1969.

89-3410. Filing of documents after organization. Sooner than thirty-one (31) days after the district has been decreed organized, the clerk of the court shall transmit to the secretary of state, the department, and to the county clerk and recorder in each of the counties having lands in the district, copies of the election results, the decree of the court incorporating the district, and a description of the boundaries of the district. Copies of the same documents shall be filed in the office of the secretary of state in the same manner as articles of incorporation are required to be filed under the laws governing corporations. Copies shall also be filed in the office of the county clerk and recorder of each county in which a part of the district may be. The clerk and recorder of each county where the articles are filed and the secretary of state shall collect filing fees as provided by law.

History: En. Sec. 10, Ch. 100, L. 1969; amd. Sec. 188, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "the department" for "water board" near the beginning of this section.

89-3411. Reimbursement for expenses of organizing election. If organized, the district shall reimburse the county, or counties, for the expenses incurred in the organizing election.

The costs of conducting the preliminary and feasibility studies shall be considered costs of construction of an approved project and shall be included in determination of the repayment schedules by the directors of the district.

History: En. Sec. 11, Ch. 100, L. 1969; amd. Sec. 1, Ch. 18, L. 1973.

Amendments

The 1973 amendment added the second paragraph.

89-3412. Appointment of directors—terms of office—vacancies—first annual meeting—corporate surety bond. If a district is organized, the court shall:

(1) establish by court order the number of persons who shall comprise the directors, appoint persons who are electors within the district to membership on the board of directors, and fix their compensation. The number shall not be less than three (3) nor more than eleven (11) persons. In fixing the number and making the appointments the court shall consider the interests and purposes to be served by the district. Upon a verified petition filed by a majority of the directors and for good cause shown, the court may enlarge or reduce the membership of the directors, but not to exceed eleven (11) nor to be less than three (3);

(2) fix the terms of office so that approximately one-third (⅓) of the directors first appointed shall serve for one (1) year; approximately one-third (⅓) shall serve two (2) years; and the remainder shall serve three (3) years. All succeeding terms shall be three (3) years. Unless

excused for good cause, a director who misses three (3) consecutive regular meetings has vacated his postition;

(3) fill all vacancies on the board by appointment or reappointment;

(4) specify a date for the first annual meeting of the directors;

(5) specify the amount and form of a corporate surety bond which each member of the directors shall furnish at the expense of the district, conditioned upon his faithful performance of his duties as a director.

History: En. Sec. 12, Ch. 100, L. 1969.

89-3413. Selection of officers—bylaws and rules—minutes—regular and special meetings. (1) The directors shall select from among themselves a chairman, vice-chairman, secretary, and other necessary officers. The directors shall adopt bylaws and rules for the conduct of meetings. All official acts of the directors shall be entered in a book of minutes to be kept by the secretary.

(2) The directors shall establish times for regular meetings and may hold special meetings upon the call of the chairman or any two (2) members, and (except in case of emergency) upon at least three (3) days notice of the time, place, and purpose of the meeting.

History: En. Sec. 13, Ch. 100, L. 1969.

89-3414. Powers of directors. On behalf of the district, the directors may:

(1) adopt an official seal;

(2) sue and be sued;

(3) adopt rules to promote and encourage water recreation, including requirements concerning public access areas and facilities, and rules respecting the use of reservoirs and waters, picnic sites, and other recreational areas operated by the district. Rules adopted shall be filed with the secretary of directors and shall be available to any interested party upon reasonable request;

(4) enter private property for the purposes of making surveys, provided that just compensation for actual damages is made;

(5) provide for reimbursing of its members for actual expenses;

(6) appropriate water and initiate or participate in the adjudication of streams;

(7) acquire, undertake, construct, develop, improve, maintain, and operate works and all incidental facilities;

(8) acquire by purchase, exchange, gift, lease, grant, devise, or otherwise, lands, water, water rights, or rights of way as necessary for the execution of any authorized function of the district. Title to all property (including water rights) shall be in the name of the district;

(9) merge with other special districts as hereinafter provided;

(10) hold and dispose of property as necessary or convenient in the performance of the functions of the district;

(11) call upon the county attorney or attorney general for such legal services as the district may require, or in the discretion of the directors, employ private legal counsel;

(12) withhold the delivery of water upon which there are any defaults or delinquencies of payment, and otherwise dispose of that water while the default or delinquency continues;

(13) borrow money and incur indebtedness and issue bonds to finance works as provided by this act;

(14) refund bonded indebtedness incurred by the district as provided by this act;

(15) after a hearing held in accordance with section 17 [89-3417] of this act, make assessments sufficient to meet the budgetary requirements for the coming year;

(16) contract for service, for water furnished, or for the sale of water with any person;

(17) fix and revise from time to time and collect rates, fees, and other charges for the services, facilities, or water furnished by the district to any person;

(18) allocate or reallocate unused waters of the district;

(19) co-operate with; accept grants, loans, and other assistance from; act as agent for; and enter into agreements with any and all state or federal agencies, and exercise all necessary or convenient powers in connection therewith;

(20) enter into any obligation or contract with an agency of the federal government for the construction, operation, and maintenance of works; or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands under the provisions of the federal reclamation act and rules established under that act; or contract with an agency of the federal government for a water supply under any federal act providing for or permitting such a contract. However, the action must be approved by a majority of the electors voting at an election held as provided in section 24 [89-3424]. If a contract is made with an agency of the federal government, the directors may deposit bonds of the district with the United States at ninety per cent (90%) of their par value, to secure the amount to be paid by the district to the United States under any contract, the interest on the bonds of the district to be applied as specified by the contract. If bonds of the district are deposited with the United States, it is the duty of the directors to make an assessment sufficient to meet all payments accruing under the terms of any contract with the United States;

(21) accept appointment of the district as fiscal agent for the United States or authorization of the district to make collections of moneys for or on behalf of the United States in connection with any federal recla-

mation projects and the district is authorized to act and to assume the duties and liabilities incident to this action. However, the action must be approved by a majority of the electors voting at an election held as provided in section 24 [89-3424]. The directors may do all things required by federal statutes and rules and require prompt payment of all charges as a prerequisite to water service;

(22) in addition to all voted indebtedness, borrow money as necessary but the amount shall not at any one time exceed five per cent (5%) of the taxable valuation of real property in the district;

(23) mortgage property owned by the district if the terms of the mortgage are not inconsistent with the provisions of a resolution authorizing the sale of bonds;

(24) use any surplus funds to purchase outstanding bonds;

(25) make contracts incidental to the performance of the district's functions, and employ and fix the compensation of employees, agents or consultants as are deemed necessary, including but not limited to, a manager, attorneys, accountants, engineers, construction and financial experts;

(26) co-operate with soil and water conservation districts to obtain agreements to carry out soil conservation measures and proper farm plans from owners of lands situated in the drainage area above each retention reservoir to be installed with federal assistance.

History: En. Sec. 14, Ch. 100, L. 1969.

89-3415. Participation in federal programs. A district organized under this act, by itself or in conjunction with others, as a sponsoring organization may participate in all federal programs including, but not limited to, the Watershed Protection and Flood Prevention Act of 1954 (68 Stat. 666), the federal Water Project Recreation Act of 1965 (79 Stat. 213), the federal Reclamation Act of 1902 (32 Stat. 388), and amendments to those acts.

History: En. Sec. 15, Ch. 100, L. 1969 amd. Sec. 189, Ch. 253, L. 1974.

Compiler's Notes

The Watershed Protection and Flood Prevention Act of 1954, referred to in this section, is compiled in the United States Code as Tit. 16, sec. 1001 et seq. and Tit. 33, sec. 701b note.

The federal Water Project Recreation Act of 1965 is compiled in the United States Code as Tit. 16, sec. 460*l*-12.

The federal Reclamation Act of 1902 is compiled in the United States Code as Tit. 43, sec. 371 et seq.

Amendments

The 1974 amendment substituted "may participate" for "to participate."

89-3416. Assessments. (1) To the extent that anticipated revenues from rates, fees, and other charges fixed pursuant to section 14, subsection (17) [89-3414 (17)] will not be sufficient to meet the district's anticipated obligations for annual operation, maintenance, and replacement or depreciation of works, or for payment of the interest and principal on bonded indebtedness, the directors may make an assessment of not more than two (2) mills on all taxable real property in the district for the purpose of fully meeting such obligations.

(2) In addition to the assessment authorized by subsection (1), the directors may annually make an assessment of up to three (3) mills on the taxable real property in the district to pay interest and principal on bonded indebtedness.

(3) The assessments are a lien upon each lot or parcel of land within the district to the extent of the assessment on each.

(4) All assessments have the same force and effect as other liens for taxes and their collection shall be enforced in the way provided for enforcement of liens for county taxes. Assessments, if not paid, become delinquent at the same time as county taxes.

(5) Except as provided in section 29 [89-3429], approval of the electors is not required for the making of these assessments.

History: En. Sec. 16, Ch. 100, L. 1969.

89-3417. Notice of public budget hearing. (1) The directors shall, prior to the first Monday in May of each year, give notice as provided in section 3, subsection (11) [89-3403 (11)] of this act of the intention to hold a public budget hearing. The notice shall include the date, time, place, and general agenda.

(2) At the hearing, the directors shall:

(a) review the present budget;

(b) present the budget for the next year;

(c) hear and consider protests from any elector;

(d) adopt the budget for the next year;

(e) set the assessment for the next year.

History: En. Sec. 17, Ch. 100, L. 1969.

89-3418. Directors to inform county assessor and treasurer annually concerning budget, special assessments and realty—multi-county districts. (1) Before the second Monday in July of each year, the directors shall provide the county assessor and treasurer with:

(a) the budget for the current fiscal year;

(b) a statement of the amount of special assessments to be collected for the districts;

(c) a listing of all real property within the district.

(2) If the district is located in more than one (1) county, the directors shall provide this information to each of the county assessors and treasurers.

History: En. Sec. 18, Ch. 100, L. 1969.

89-3419. Collection of special assessments—multi-county districts—investment of surplus funds—interest. (1) The treasurer of each county in which the district is located shall collect special assessments at the same time and in the same way as county taxes.

(2) If the district is located in more than one (1) county, all assessments collected shall be deposited with the treasurer of the county in which the assessments were collected.

(3) The directors shall direct the county treasurer to invest any surplus district funds in saving or time deposits in a state or national bank insured by the Federal Deposit Insurance Corporation or in direct obligations of the United States government payable within one hundred eighty (180) days from the time of investment. All interest collected on the deposits or investments shall be credited to the fund from which the money was withdrawn. However, five per cent (5%) of the interest shall be deposited in the general fund of the county.

History: En. Sec. 19, Ch. 100, L. 1969.

89-3420. Condemnation authorized—water rights. The district may exercise the right of eminent domain in the manner provided by the law to take private property for public use, with just compensation, where the taking is necessary for the purposes of the district. Water rights as such shall not be subject to such taking, but may be taken as an incident to the condemnation of land to which such rights are appurtenant, where the taking of the land is the principal purpose of the condemnation.

History: En. Sec. 20, Ch. 100, L. 1969.

89-3421. Annual written report of directors' activities. Before August 1 of each year, the directors shall send a written report of their activities during the previous fiscal year to the court and to the department. Reports shall be in the form, and contain the information, prescribed by the department.

History: En. Sec. 21, Ch. 100, 1969; amd. Sec. 190, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "water board" at the end of the first and second sentences.

89-3422. Department of community affairs to examine financial records—report—fee. At least once each year the department of community affairs shall examine the financial records of each district and file a report of the examination with the department of natural resources and conservation and court. The department of community affairs shall collect a fee for the examination equal to that charged irrigation districts.

History: En. Sec. 22, Ch. 100, L. 1969; amd. Sec. 191, Ch. 253, L. 1974; amd. Sec. 53, Ch. 213, L. 1975.

Amendments

The 1974 amendment substituted "department of intergovernmental relations" for "state examiner" in two instances and "department of natural resources and conservation" for "water board."

The 1975 amendment substituted "department of community affairs" for "state examiner" in the caption, and for "department of intergovernmental relations" throughout the section.

Effective Date

Section 54 of Ch. 213, Laws 1975 read "This act shall take effect on July 1, 1975. After that date, every reference to the department of intergovernmental relations shall be to the department of community affairs."

89-3423. Persons entitled to vote. (1) Only persons who are taxpayers upon and owners of real property located within the district and whose names appear upon the last completed assessment roll of some county within the district for state, county and school district taxes are electors and shall be entitled to vote in elections, provided that:

(a) an elector need not reside within the district in order to vote;

(b) where a corporation owns taxable real property within the boundaries of the conservancy district, the authorized agent of such corporation shall be entitled to cast a vote on behalf of the corporation;

(c) where land is under contract of sale to a purchaser and the contract is recorded, only the purchaser shall have the right to vote;

(d) guardians, executors, administrators, and trustees of real property within the district, shall be entitled to cast the vote for the owner of the land.

(2) When voting, an agent of a corporation or of co-owners, or a guardian, executor, administrator, trustee, or purchaser under contract of sale, may be required to show his authority by the judges of the election.

History: En. Sec. 23, Ch. 100, L. 1969.

89-3424. Election procedures. Election procedures after organization are:

(1) The directors shall designate the polling places, at least one (1) in each county, and hours when the polls will be open;

(2) Notice shall be published of the location of polling places and hours when the polls are open as provided in section 3, subsection (11) [89-3403 (11)] of this act;

(3) The directors shall appoint three (3) judges for each polling place and fix their compensation;

(4) The judges shall appoint one (1) of their number as clerk of the election;

(5) The clerks and recorders of the counties in which the election is to be held shall supply poll lists, registers, ballots, and other necessary election supplies;

(6) The judges shall cause the ballots to be counted and certify the results to the directors;

(7) The directors shall canvass the returns;

(8) The directors shall reimburse the counties for actual expenses incurred in the election.

History: En. Sec. 24, Ch. 100, L. 1969.

89-3425. Challenging voters. An elector may challenge any person who claims the right to vote. Before voting, any person challenged must take and sign the following oath or affirmation administered by an election judge:

"I _____ (name) solemnly swear (or affirm) that I am an elector of the district and have not voted today." False subscription to the oath or affirmation is false swearing and is punishable as provided in 94-7-203.

History: En. Sec. 25, Ch. 100, L. 1969; amd. Sec. 49, Ch. 460, L. 1977.

Amendments

The 1977 amendment substituted "false swearing and is punishable as provided in 94-7-203" at the end of the section for "perjury and punishable as such."

89-3426. Issuance of bonds—maximum term—sale as single issue of multi-purpose bonds. A district may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided by this act for the cost of works. Bonds issued shall be for a maximum term of not to exceed forty (40) years. Bonds for more than one purpose may be sold as a single issue.

History: En. Sec. 26, Ch. 100, L. 1969; amd. Sec. 43, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted from the end of the second sentence "and a maximum rate of interest not more than six per cent (6%)."

Effective Date

Section 44 of Ch. 234, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

89-3427. Determination of amount of bonds to be issued. In determining the amount of bonds to be issued, the directors may include:

(1) all costs of works;

(2) all costs and estimated costs of issuance of the bonds;

(3) interest which they estimate will accrue on money borrowed during the construction period and for six (6) months after the period.

History: En. Sec. 27, Ch. 100, L. 1969.

89-3428. Resolution for issuance of bonds—notice—election. When the directors find it necessary to issue bonds, the directors shall:

(1) pass a resolution which includes:

(a) the purpose or purposes for which the bonds will be issued;

(b) the maximum amount and term of the bonds;

(c) the maximum interest rate the bonds will bear;

(d) whether the bonds will be repaid from revenues, assessments, or both.

(2) give notice as provided in section 3, subsection (11) [89-3403 (11)] of this act which shall include the resolution adopted by the directors, location of polling places, and hours when the polls will be open;

(3) hold an election as provided by section 24 [89-3424] of this act.

History: En. Sec. 28, Ch. 100, L. 1969.

89-3429. Approval of bond issue at election—authorizes assessments—recording of election results—validity of election—single proposition. (1) For a bond issue to be approved, forty per cent (40%) of the qualified electors must vote thereon, and sixty per cent (60%) of those voting must approve the issue.

(2) Approval of the bond issue shall authorize the directors to make assessments as provided in section 16 [89-3416] necessary to pay the principal and interest on bonds issued.

(3) The directors shall enter the results of the election in their records.

(4) If otherwise fairly conducted, no irregularities or informalities shall invalidate the election.

(5) Bonds for more than one purpose may be submitted to the electors as a single proposition.

History: En. Sec. 29, Ch. 100, L. 1969.

89-3430. Resolution providing for form, execution and issuance of bonds—bids—private sale—sale price—rejection of bids. If a bond issue is approved, the directors shall by resolution provide for the form and execution of the bonds and for issuance of all or any part of the bonds. After adequate notice that sealed proposals will be received, the directors may award the purchase of all or a part of the issue to the best bidder or bidders, and may sell at private sale any or all bonds not sold on bids.

The said bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board shall reserve the right to reject any and all bids and to sell the said bonds at private sale.

History: En. Sec. 30, Ch. 100, L. 1969.

89-3431. Comparable to municipal bonds—exempt from taxation. Bonds issued under this act have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: En. Sec. 31, Ch. 100, L. 1969.

89-3432. Interim receipts—negotiability. Pending preparation of the bonds sold under this act, receipts or certificates may be issued to purchasers in the form, and with provisions, as determined by the directors. Bonds and interim receipts or certificates are fully negotiable as provided by the Uniform Commerical Code—Investment Securities.

History: En. Sec. 32, Ch. 100, L. 1969.

Cross-References

Uniform Commercial Code—Investment Securities, sec. 87A-8-101 et seq.

89-3433. Registration of bonds—copy to be furnished county treasurer. (1) When duly executed, all bonds issued under this act shall be registered by the county treasurer of the county in which the largest portion of the taxable valuation of real property of the district is located. They shall be registered in a book provided for that purpose before being delivered to the purchaser.

(2) The registration shall show:

(a) the number and amount of each bond;

(b) the date of issue and date redeemable;

(c) the name of the purchaser;

(d) the amount and due date of all payments required on the bonds.

(3) The directors shall provide the county treasurer with an unsigned and canceled printed copy of each issue of bonds of the district. The copy shall be preserved in his office.

History: En. Sec. 33, Ch. 100, L. 1969.

89-3434. Deposit of sales proceeds — disposition — investment. (1) Proceeds from the sales of bonds shall be deposited with the county in which the largest portion of the taxable valuation of real property of the district is located.

(2) The county treasurer shall place the proceeds of the bond sale to the credit of the district. The proceeds shall be paid by the county treasurer on written order of the directors. Proceeds shall only be spent for the purposes for which the bonds were issued.

(3) The directors shall instruct the county treasurer to deposit any part of the proceeds which is not immediately needed for the purpose for which the bonds were issued in a saving or time deposit in a state or national bank insured by the Federal Deposit Insurance Corporation or to invest in direct obligations of the United States government. The obligations shall be payable within not to exceed one hundred eighty (180) days from the time of deposit or investment.

History: En. Sec. 34, Ch. 100, L. 1969.

89-3435. Refunding bonds authorized—redemption. (1) Refunding bonds may be issued in the same way as any other bonds authorized by this act.

(2) All bonds, original issue or refunding issue, shall be redeemable when one-half (½) of the term or ten (10) years of the term for which they were issued, whichever may be the less, has expired. Redemption may be made on any interest due date of any bond prior to its maturity after the bond shall be subject to redemption as herein provided. The right of redemption, as herein provided, must be stated on the face of each bond.

History: En. Sec. 35, Ch. 100, L. 1969.

89-3436. Fund for retirement of bonds—investment and disbursement. Revenue, assessment, and other funds on hand, including reserves pledged for the payment and security of outstanding bonds may be deposited in a fund created for the retirement of bonds and may be invested and disbursed as provided by this act, to the extent consistent with the resolution authorizing the outstanding bonds.

History: En. Sec. 36, Ch. 100, L. 1969.

89-3437. Revolving funds—purpose—excess money—funds deposited with county treasurer. (1) The directors by resolution may establish revolving funds to finance, on a reimbursable basis:

(a) construction, purchase, lease and operation of revenue-producing works;

(b) contracts to provide services or facilities.

(2) Money in the revolving fund shall not be spent for any purposes other than those specified in the resolution. However, excess money may be transferred to any sinking and interest fund of the district.

(3) The county treasurer of the county having the largest portion of the taxable valuation of real property of the district shall maintain a separate account for each revolving fund of the district, and all money collected under the resolution shall be deposited with the county treasurer.

History: En. Sec. 37, Ch. 100, L. 1969.

89-3438. Petition for merger of districts—hearing and notice—merger into new district—inclusion in another district—majority of electors may kill merger by petition—existing obligations. (1) In case two (2) or more districts have been organized in a territory which, in the opinion of the directors of each of the districts, should constitute but one (1) district, the directors of the districts may petition the court for an order merging the districts into a single district. The petition shall be filed in the office of the clerk of the district court in and for that county which has the largest portion of taxable valuation of property within the districts sought to be included, as shown by the tax rolls of the respective counties. The petition shall set forth facts showing that the purposes of this act would be served by the merging of the districts, and that the merger would promote the economical execution of the purposes for which the districts were organized. A copy of the petition shall be filed with the department.

(2) Upon the filing of the petition, the court shall by order fix a time and place of hearing; and the clerk shall give notice as specified in section 89-3403 as well as by mail to the directors of the districts which would be merged. The notice shall contain the purpose, time, and the place of the hearing.

(3) Upon the hearing, should the court find that the averments of the petition are true and that the districts, or any of them, could feasibly and profitably be merged, it shall order that the merger take place and the districts shall be merged into one (1) district and proceed as such. The court shall designate the corporate name of the district, and further proceedings shall be taken as provided for in this act. The court shall by order appoint the directors of the district, who shall thereafter have powers and be subject to rules as are provided for directors in districts created in the first instance.

(4) Instead of organizing a new district from the constituent districts, the court may, in its discretion, direct that one (1) or more of the districts described in the petition be included in another of the districts,

which other shall continue under its original corporate name and organization; or the court may direct that the district or districts so absorbed shall be represented on the directors of the original districts, designating what members of the directors of the original district shall be retired from the new board, and what members representing the included district or districts shall take their places.

(5) If the court receives a petition opposing the merger, signed by a majority of the electors of any of the concerned districts, the court shall not grant the order and shall dismiss the petition.

(6) Upon merger or inclusion, existing obligations shall remain exclusively with those who bore them prior to the merger or inclusion, except with the written consent, given prior to the merger or inclusion, of those who did not bear the obligations.

History: En. Sec. 38, Ch. 100, L. 1969; amd. Sec. 192, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "water board" at the end of subsection (1); and substituted "section 89-3403" for "section 3, subsection (11) of this act" in subsection (2).

89-3439. Procedure for annexing realty. To annex real property to the district, the procedure is:

(1) The directors shall petition the court.

(2) The petition shall:

(a) give a general description of the real property to be annexed sufficient to enable a person to determine if his property is in the proposed annexation;

(b) describe the benefits to accrue to the real property as a result of the annexation.

(3) The court shall:

(a) give notice and hold a hearing on the petition;

(b) upon good cause shown, order or deny the annexation.

History: En. Sec. 39, Ch. 100, L. 1969.

89-3440. Pre-annexation bonds not lien without prior agreement. Real property annexed to a district shall not incur any liens by reason of bonds issued before annexation unless agreed to by the owners of the annexed property, in writing, prior to annexation.

History: En. Sec. 40, Ch. 100, L. 1969.

89-3441. Exclusion of territory from district—procedure. Any territory included within any district formed under the provisions of this act, and not benefited in any manner by such district, or its inclusion therein, may be excluded therefrom.

The procedure for exclusion is:

(1) A petition for exclusion shall be initiated by either the directors or the owner or owners of the land sought to be excluded.

(2) The petition shall give a description of the territory sought to be excluded sufficient to enable a person to determine if his property is

in the proposed exclusion and shall set forth that such territory is not benefited in any manner by the district or its continued inclusion therein, and shall request that such territory be excluded from the district.

(3) When owners of property initiate the petition for exclusion, the petition shall be filed with the secretary of the district and shall be accompanied by a deposit of one hundred dollars ($100) to meet the costs incident to the process of exclusion. The unexpended balance of the deposit shall be returned to the petitioner.

(4) Upon the filing of such petition with the secretary of the district, the secretary shall duly call a meeting of the directors to consider the petition. The directors shall approve or disapprove of the merits of the petition. The secretary shall then file the petition, together with a copy of the action of the directors, with the court.

(5) The court shall give notice, hold a hearing, and issue an order either granting or denying the petition.

History: En. Sec. 41, Ch. 100, L. 1969.

89-3442. Procedure for dissolution of district. (1) The procedure for dissolution of a district is:

(a) a resolution shall be passed by the directors requesting dissolution; or

(b) a petition signed by twenty per cent (20%) of the electors representing ten per cent (10%) of the taxable valuation of real property in the district shall be presented to the directors; or

(c) if the district or its directors have been inactive for one (1) year or more, any elector may present a petition.

(2) The resolution or petition shall be presented to the court by the directors, or by the petitioners if the directors remain inactive.

(3) Not more than one (1) resolution or petition may be presented to the court in any twenty-four (24) month period, and no such petition may be presented during the first twenty-four (24) months after a district's initial organization.

History: En. Sec. 42, Ch. 100, L. 1969.

89-3443. Dissolution election — majority approval required. (1) After receipt of petition or resolution for dissolution, the court shall order an election in the way provided by section 24 [89-3424] of this act.

(2) For dissolution to be approved, a majority of the electors voting must favor dissolution.

History: En. Sec. 43, Ch. 100, L. 1969.

89-3444. Submission of termination plan—termination by directors or receiver—court order—retention of jurisdiction. (1) In the event the vote is for dissolution, any qualified elector, or the board of directors of the district may, within the time fixed by the court, present a written

plan for terminating the affairs of the district which shall include assignment of any water rights and works owned by the district.

(2) The plan may specify that the affairs of the district shall be terminated by the directors or by a receiver appointed by the court.

(3) On a day fixed by the court, the court shall consider the plan or plans and shall enter an order establishing a plan for the termination of the affairs.

(4) The court shall retain jurisdiction to modify the plan and shall supervise the termination.

History: En. Sec. 44, Ch. 100, L. 1969.

89-3445. Appointment of receiver—directors' authority ceases—assessments by receiver—annual assessments—disposition of assessments. (1) If no plan is presented on or before the date set by the court, the court shall appoint a receiver to terminate the affairs of the district under the supervision of the court.

(2) Upon the appointment of any receiver all the authority of the directors shall cease. However, until dissolution, the receiver shall have authority to levy assessments for:

(a) the payment of obligations of the district;

(b) the costs of termination.

(3) The directors, or if there is a receiver, then the receiver with the approval of the court, shall make assessments each year in an amount large enough to retire the obligations of the district.

(4) If a receiver has been appointed, he shall direct, under court supervision, the disposition of all assessments collected.

History: En. Sec. 45, Ch. 100, L. 1969.

89-3446. Entry of dissolution order—certified copy. When it appears to the satisfaction of the court that:

(1) all obligations of the district have been discharged;

(2) all the costs of termination have been paid, the court shall enter an order dissolving the district. A certified copy of the order shall be recorded by the clerk of the court in all counties in which the district was situated and filed with the secretary of state.

History: En. Sec. 46, Ch. 100, L. 1969.

89-3447. County general funds to receive funds remaining after dissolution—proportion. All funds remaining after dissolution of a district shall be deposited in the general fund of the counties in which the district is located in proportion to the taxable value of property within the district in each county.

History: En. Sec. 47, Ch. 100, L. 1969.

89-3448. No power to generate, distribute or sell electric energy. Nothing in this act shall be construed to grant to the district the power to generate, distribute or sell electric energy.

History: En. Sec. 48, Ch. 100, L. 1969.

89-3449. Other agencies not affected. The provisions of this act do not abrogate or limit in any manner the rights, powers, duties, and functions of the department, conservation districts, department of health and environmental sciences, or the department of fish and game but are supplementary thereto and in aid thereof.

History: En. Sec. 49, Ch. 100, L. 1969; amd. Sec. 193, Ch. 253, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 50, Ch. 460, L. 1977.

Amendments

The 1974 amendment substituted "department * * * environmental sciences" for "water board, state soil conservation committee, soil and water conservation districts, state board of health."

The 1977 amendment deleted "conservation commission" before "conservation districts"; and made minor changes in phraseology.

Separability Clauses

Section 50 of Ch. 100, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Section 51 of Ch. 460, Laws 1977 read: "Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 52 of Ch. 460, Laws 1977 read: "Sections 89-128, 89-1901, and 89-2818, R. C. M. 1947, are repealed."

Effective Date

Section 51 of Ch. 100, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

CHAPTER 35—FLOODWAY MANAGEMENT AND REGULATION

Section 89-3501. Findings.
89-3502. Policy and purposes.
89-3503. Definitions.
89-3504. Program for delineation of floodplains and floodways—land-use regulations.
89-3505. Artificial obstructions and nonconforming uses as nuisances.
89-3506. Establishment of artificial obstructions or nonconforming uses unlawful—permitted open space uses—prohibited nonconforming uses.
89-3507. Permits for obstructions—application—factors considered—fees.
89-3508. Powers and duties of department relative to obstructions.
89-3509. Authority to enter and investigate lands or waters.
89-3510. Obstructions exempt where drainage area is small.
89-3511. Orders and rules—judicial remedy.
89-3512. Floodway obstruction removal fund.
89-3513. Penalties for violation.
89-3514. Permit construed as added requirement—exception—immunity.
89-3515. Remedies not exclusive.

89-3501. Findings. The people of the state of Montana find that recurrent flooding of a portion of the state's land resources causes loss of life, damage to property, disruption of commerce and governmental services, and unsanitary conditions; all of which are detrimental to the health, safety, welfare and property of the occupants of flooded lands and the people of this state, and that the public interest necessitates management and regulation of flood-prone lands and waters in a manner consistent with sound land and water use management practices which will prevent and alleviate flooding threats to life and health and reduce private and public economic losses.

History: En. Sec. 1, Ch. 393, L. 1971.

Title of Act

An act relating to management and regulation of the floodways of watercourses as prescribed; to define terms; to provide for certain duties and powers of the Montana water resources board as prescribed; to provide for a floodway obstruction removal fund; to declare certain acts unlawful; and to provide for penalties.

89-3502. Policy and purposes. (1) The policy and purposes of this act are to guide development of the floodway areas of this state consistent with the enumerated findings; to recognize the right and need of watercourses to periodically carry more than the normal flow of water; to provide state co-ordination and technical assistance to local units in management of floodway areas; to co-ordinate federal, state and local management activities for floodway areas; to encourage local governmental units to manage flood-prone lands including the adoption, enforcement and administration of land-use regulations; and to provide the department of natural resources and conservation with authority necessary to carry out a comprehensive floodway management program for the state.

(2) Specifically, it is the purpose of this act to:

(a) restrict or prohibit uses which are dangerous to health, safety of property in times of flood or cause increased flood heights or velocities;

(b) require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;

(c) develop and provide information to identify lands which are unsuited for certain development purposes because of flood hazard;

(d) distinguish between the land-use regulations applied to the designated floodway and those applied to that portion of the designated floodplain not contained within the designated floodway;

(e) apply more restrictive land-use regulations within the designated floodway;

(f) ensure that regulations and minimum standards adopted under this act, in so far as possible, balance the greatest public good with the least private injury.

History: En. Sec. 2, Ch. 393, L. 1971; amd. Sec. 194, Ch. 253, L. 1974; amd. Sec. 1, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 253, Laws of 1974, inserted the numerical subsection designations; changed the subdivision designations in subsection (2) from numerals to small letters; substituted "department of natural resources and conservation" for "Montana water resources board" near the end of subsection (1); and made minor changes in punctuation.

Chapter 271, Laws of 1974, added subdivisions (d), (e), and (f) to subsection (2).

89-3503. Definitions. As used in this chapter, unless the context otherwise requires:

(1) "A flood of one hundred (100) year frequency" means a flood magnitude expected to recur on the average of once every one hundred

(100) years, or a flood magnitude which has a one per cent (1%) chance of occurring in any given year;

(2) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway;

(3) "Board" means the board of natural resources and conservation provided for in section 82A-1509;

(4) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15;

(5) "Designated floodway" means a floodway whose limits have been designated and established by order of the board;

(6) "Designated floodplain" means a floodplain whose limits have been designated and established by order of the board;

(7) "Drainway" means any depression two (2) feet or more below the surrounding land serving to give direction to a current of water less than nine (9) months of the year, having a bed and well-defined banks; provided, that in the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse;

(8) "Flood" means the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway;

(9) "Floodway" means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the flood water of any watercourse or drainway;

(10) "Floodplain" means the area adjoining the watercourse or drainway which would be covered by the flood water of a flood of one hundred (100) year frequency;

(11) "Establish" means construct, place, insert, or excavate;

(12) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodplain or floodway by a nonhuman cause;

(13) "Artificial obstruction" means any obstruction which is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodplain or floodway which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property;

(14) "Owner" means any person who has dominion over, control of, or title to an obstruction;

(15) "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land-use regulations;

(16) "Responsible political subdivision" means a political subdivision that has enacted land-use regulations in accordance with this act; and

(17) "Watercourse" means any depression two (2) feet or more below the surrounding land serving to give direction to a current of water at least nine (9) months of the year, having a bed and well-defined banks; provided, that it shall, upon order of the board, also include any particular depression which would not otherwise be within the definition of watercourse.

History: En. Sec. 3, Ch. 393, L. 1971; amd. Sec. 1, Ch. 294, L. 1973; amd. Sec. 195, Ch. 253, L. 1974; amd. Sec. 2, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment substituted subdivision (1) for a parallel definition of a "flood of fifty-year frequency"; and inserted the definition of "department" in subdivision (4).

Chapter 253, Laws of 1974, substituted "this chapter" for "this act" in the introductory clause; substituted "board of natural resources and conservation provided for in section 82A-1509" in subdivision (3); and made minor changes in phraseology and punctuation.

Chapter 271, Laws of 1974, deleted a definition of "artificial obstruction" as meaning any obstruction which is not a natural obstruction; substituted "board of natural resources and conservation" for "Montana water resources board" in subdivision (3); inserted subdivision (6); deleted a definition of "Floodway-encroachment lines" as meaning the lines limiting a designated floodway; added "of a flood of one hundred (100) year frequency" at the end of the definition of "Floodplain" in subdivision (10); inserted "Floodplain or" before "Floodway" in subdivision (12); substituted "Artificial obstruction" for "Obstruction" in subdivision (13); inserted "obstruction which is not a natural obstruction which includes any" before "dam" in subdivision (13); inserted "floodplain or" before "floodway" in subdivision (13); inserted subdivision (16); and made minor changes in phraseology and punctuation.

89-3504. Program for delineation of floodplains and floodways—land-use regulations. (1) (a) The department shall initiate a comprehensive program for the delineation of designated floodplains and designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data and may enter into arrangements with the United States geological survey, the United States army corps of engineers, or any other state or federal agency for such acquisition.

(b) Before the board establishes by order a designated floodplain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation shall include but not be limited to the following:

(i) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as considered appropriate;

(ii) notifying local officials, including members of the county commission, city council, and planning board of the progress of surveys,

studies, and investigations and of proposed findings, along with information concerning data and methods employed in reaching such conclusions; and

(iii) encouraging local dissemination of information concerning surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the department.

(2) When sufficient data have been acquired by the department, the board shall establish, by order, after a public hearing, the designated floodplain within which a political subdivision may establish land-use regulation. When sufficient data have been acquired, the board shall establish, by order, after a public hearing, the designated floodway within which a political subdivision may establish land-use regulation. These designations shall be based upon reasonable hydrological certainty. When the designated floodplain or the designated floodway has been established, the department shall furnish this data to officials of the political subdivision having jurisdiction over those areas together with a map outlining the areas involved, a copy of this act, adopted rules of the board, and suggested minimum standards adopted by the board. These standards and rules shall reflect gradations in flood hazard based on criteria as outlined in 89-3507(2). In adopting these standards and rules, the board shall consider local input from the affected political subdivisions. The department shall record all designated floodplains or designated floodways established by the board in the office of the county clerk and recorder of each county in which those floodplains or floodways are found. The board may alter the floodplains or floodways at any later time, by order, after a public hearing if a reevaluation of the then available flood data warrant it. Notice of a hearing or order of the board establishing or altering the floodplains or floodways shall be given by publishing the notice once each week for 3 consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than 10 days prior to the date set for the hearing or the effective date of the order.

(3) Upon transmittal of the floodplain information to officials of a political subdivision, the political subdivision has 6 months from the date of transmittal to adopt land-use regulations which meet or exceed the minimum standards of the board. If within the 6-month period the political subdivision has failed to adopt the land-use regulations, the department shall enforce the minimum standards within the designated floodplain or the designated floodway as established by the board under subsection (2) of this section, and no artificial obstruction or nonconforming use may be established by any person within the designated floodplain or the designated floodway, unless specifically authorized by the board.

(4) A political subdivision which has failed to adopt land-use regulations which meet or exceed the minimum standards of the board within the 6-month period may subsequently adopt such regulations and, if approved by the board, they shall be effective within the designated floodplain or floodway and administered and enforced by the political subdivision.

(5) When necessary for compliance with federal flood insurance requirements, the board may shorten the 6-month period upon notification to the political subdivision and publication of a notice thereof in a newspaper of general circulation in the affected area once a week for 3 consecutive weeks.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977.

Amendments

The 1973 amendment substituted "one hundred (100) year frequency" for "fifty-year frequency" throughout the section.

Chapter 253, Laws of 1974, substituted "The department" for "The board" at the beginning of subdivision (1)(a); inserted "by the department" after "have been acquired" in the first sentence of subsection (2); substituted "department" for "board" in the provisions requiring the furnishing of data to political subdivisions and recording of designated floodplains or designated floodways in subsection (2); and made minor changes in phraseology and punctuation.

Chapter 271, Laws of 1974, revised the section to substituted provisions for delineation and establishment of "designated floodplains and designated floodways" for "prior provisions for delineation" of "designated floodways" and establishment of "floodway-encroachment lines"; changed the period within which political subdivisions are required to adopt line-use regulations from one year to six months; added the last sentence of subsection (3); and made minor changes in phraseology, punctuation, and style.

The 1977 amendment deleted "and regulations" after "rules" near the beginning of the sixth sentence of subsection (2); inserted subsection (4); designated the former last sentence of subsection (3) as subsection (5); and made minor changes in phraseology, punctuation and style.

89-3505. Artificial obstructions and nonconforming uses as nuisances. An artificial obstruction or nonconforming use in a designated floodplain or designated floodway enforced under section 89-3504(3) and not exempt under section 89-3506 is a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the department or the responsible political subdivision.

History: En. Sec. 5, Ch. 393, L. 1971; amd. Sec. 3, Ch. 294, L. 1973; amd. Sec. 197, Ch. 253, L. 1974; amd. Sec. 4, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment inserted the reference to subsection (4) of section 89-3504; and made a minor change in style. However, section 89-3504 has no subsection (4).

Chapter 253, Laws of 1974, substituted "section 89-3504(3)" for "89-3504, subsections (3) or (4)"; substituted "section 89-3506" for "section 6 of this act"; and made minor changes in phraseology.

Chapter 271, Laws of 1974, inserted "designated floodplain or" before "designated floodway" and substituted "department or the responsible political subdivision" for "board" at the end of the section.

89-3506. Establishment of artificial obstructions or nonconforming uses unlawful—permitted open space uses—prohibited nonconforming uses. (1) It is unlawful for a person to establish an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway, without a permit from the department or the responsible political subdivision. This act does not affect any existing artificial obstruction or nonconforming use established in the designated floodplain or designated floodway before the land-use regulations adopted by the political subdivision

are effective or before the board has enforced a designated floodplain or a designated floodway under section 89-3504(3); however, a person may not make nor may an owner allow alterations of an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway whether the obstruction proposed for alteration was located in the floodplain or floodway before or after the effective date of this act except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction is not an alteration.

(2) The following open space uses shall be permitted within the designated floodway, to the extent that they are not prohibited by any other ordinance or statute, and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment: (a) agricultural uses; (b) industrial-commercial uses such as loading areas, parking areas, emergency landing strips; (c) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails; (d) forestry, including processing of forest products with portable equipment; (e) residential uses such as lawns, gardens, parking areas and play areas; (f) excavations subject to the issuance of a permit under section 89-3507.

(3) Permits shall be granted for the following uses within that portion of the floodplain not contained within the designated floodway, to the extent that they are not prohibited by any other ordinance, regulation or statute:

(a) any use permitted in the designated floodway;

(b) structures, including, but not limited to, residential, commercial, and industrial structures, provided that:

(i) such structures meet the minimum standards adopted by the board;

(ii) residential structures are constructed on fill such that the lowest floor elevation (including basements) is two (2) feet above the one hundred (100) year flood elevation;

(iii) commercial and industrial structures are either constructed on fill as specified in subparagraph (ii) above, or are adequately floodproofed up to an elevation no lower than two (2) feet above the one hundred (100) year flood elevation. Such floodproofing shall be in accordance with the minimum standards adopted by the board.

(4) The following nonconforming uses shall be prohibited within the designated floodway: (a) A building for living purposes or place of assembly or permanent use by human beings; (b) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway; (c) the construction or permanent storage of an object subject to flotation or movement during flood level periods.

History: En. Sec. 6, Ch. 393, L. 1971; 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment inserted the reference to subsection (4) of section 89-3504 in the second sentence of subsection (1); and made a minor change in style. However, section 89-3504 has no subsection (4).

Chapter 253, Laws of 1974, substituted "before the land-use regulations adopted by the political subdivisions are effective or" for "prior to the effective date of this act and" in the second sentence of subsection (1); substituted "section 89-3504 (3)" for "section 89-3504, subsections (3) or (4)" in the second sentence of subsection (1); and made minor changes in phraseology and punctuation.

Chapter 271, Laws of 1974, inserted references to "designated floodplain"; substituted "the department or responsible political subdivision" for "the board" at the end of the first sentence and at the end of the second sentence in subsection (1); inserted subsection (3); redesignated former subsection (3) as (4); and made minor changes in phraseology and punctuation.

89-3507. Permits for obstructions—application—factors considered—fees. (1) The department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses which would otherwise violate section 89-3506. The application for the permit shall be submitted to the department and contain such information as the department or the responsible political subdivision requires, including complete maps, plans, profiles and specifications of the obstruction or use and watercourse or drainway.

(2) In passing upon the application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the board: (a) the danger to life and property by water which may be backed up or diverted by the obstruction or use; (b) the danger that the obstruction or use will be swept downstream to the injury of others; (c) the availability of alternate locations; (d) the construction or alteration of the obstruction or use in such a manner as to lessen the danger; (e) the permanence of the obstruction or use; (f) the anticipated development in the foreseeable future of the area which may be affected by the obstruction or use; and, (g) such other factors as are in harmony with the purpose of this act. The department or the responsible political subdivision may make a part of the permit any reasonable conditions it may consider advisable. In order for the permit to continue to remain in force, the obstruction or use must be maintained so as to comply with the conditions and specifications of the permit.

(3) Permits for obstructions or uses to be established in the designated floodplain or designated floodway of watercourses must be specifically approved or denied within a reasonable time by the department or the responsible political subdivision; permits for obstructions or uses in the designated floodplains or designated floodways shall be conclusively deemed to have been granted sixty (60) days after the receipt of the application by the department or the responsible political subdivision, or after such time as the board or the responsible political subdivision specifies, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision

shall send to the department a copy of each permit granted pursuant to this section.

(4) An application for a permit shall be accompanied by a nonrefundable application fee of ten dollars ($10) which the state treasurer shall credit to the floodway obstruction removal fund.

History: En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 253, Laws of 1974, inserted "be submitted to the department and" in the second sentence of subsection (1); substituted "as the department requires" for "as the board shall require" in the second sentence of subsection (1); substituted "after the receipt of the application by the department" for "after the receipt of such application by the board" in subsection (3); and made minor changes in phraseology and punctuation.

Chapter 271, Laws of 1974, substituted references to "the department or the responsible political subdivision" for references to "the board" in subsections (1), (2), and (3); substituted references to "artificial obstructions and nonconforming uses" and to "obstruction or use" for references to "obstructions" and to "obstruction" in subsections (1), (2), and (3); inserted "in accordance with minimum standards established by the board" near the beginning of the first sentence in subsection (2); inserted references to "designated floodplains" in subsection (3); and made minor changes in phraseology and punctuation.

89-3508. Powers and duties of department relative to obstructions. (1) Where an obstruction to a designated floodway established under section 89-3504(2) has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the department may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the department; and

(2) Where, after investigation, notice, and hearing, an order has been issued by the board to the owner of an obstruction not exempt under section 89-3506 for its removal or repair, and the order is not complied with within such reasonable time as may be prescribed, or if the owner cannot be found or determined, the department may make or cause the removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law.

History: En. Sec. 8, Ch. 393, L. 1971; amd. Sec. 5, Ch. 294, L. 1973; amd. Sec. 200, Ch. 253, L. 1974; amd. Sec. 7, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment inserted the reference to subsection (4) of section 89-3504 near the beginning of subdivision (1); and made a minor change in style. However, section 89-3504 has no subsection (4).

Chapter 253, Laws of 1974, deleted an introductory phrase which read: "The powers and duties of the board relative to obstructions in a board floodway shall include the following"; substituted references to "department" for references to "board" in two places in subsection (1) and in one place in subsection (2); substituted "section 89-3504(2)" for "section 89-3504, subsections (2) or (4)" in subsection (1); inserted "by the board" after "issued" near the beginning of subsection

(2); and made minor changes in phraseology and punctuation.

Chapter 271, Laws of 1974, inserted "designated" before "floodway" in subsection (1).

89-3509. Authority to enter and investigate lands or waters. The department or the responsible political subdivision may make reasonable entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by this act. An investigation of a natural or artificial obstruction or nonconforming use shall be made by the department either on its own initiative, on the written request of any three (3) titleholders of land abutting the watercourse or drainway involved, or on the written request of a political subdivision.

History: En. Sec. 9, Ch. 393, L. 1971; amd. Sec. 201, Ch. 253, L. 1974; amd. Sec. 8, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 253, Laws of 1974, substituted references to "department" for references to "board" in two places and made minor changes in phraseology.

Chapter 271, Laws of 1974, inserted "or the responsible political subdivision" after "department" near the beginning of the section; inserted "or nonconforming use" after "obstruction" in the second sentence; and made minor changes in phraseology.

89-3510. Obstructions exempt where drainage area is small. This act shall not extend to any obstruction in the floodplain or floodway of a watercourse or drainway where the drainage area above the same, either within or without the state, is less than twenty-five (25) square miles in extent, unless a particular watercourse or drainway is expressly declared to be within the coverage of this act by order of the board.

History: En. Sec. 10, Ch. 393, L. 1971; amd. Sec. 9, Ch. 271, L. 1974.

Amendments

The 1974 amendment inserted "floodplain" before "floodway."

89-3511. Orders and rules—judicial remedy. The board may adopt such orders and rules as are necessary to implement this act. If an order is issued to the owner of an artificial obstruction or nonconforming use not exempt under section 89-3506 for its removal or repair, the order shall not become effective less than ten (10) days after a hearing is held relating to the order. In addition to any requirement imposed by section 89-3504 (2), where an order is issued which affects with particularity the land adjacent to a watercourse or drainway, notice of the contents of the order and of any required hearing shall be mailed by the department to the titleholder of the land not less than ten (10) days before the effective date of the order, or, if there is a required hearing, to the titleholder of the land and to the owner of the artificial obstruction or nonconforming use not less than ten (10) days before the date of the hearing; however, the notice need not be given to the owner of the artificial obstruction or nonconforming use for an order issued pursuant to section 89-3508 (2) if the owner cannot be found or determined. All orders and rules adopted by the board shall be on file at the offices of the department and in the office of

the county clerk of each county affected by the order or rule. A person aggrieved by any order of the board issued under this act may appeal from the order to a court of competent jurisdiction within thirty (30) days after its effective date. If an appeal is taken, enforcement of the order shall be stayed pending the outcome of the appeal. Service of notice of the appeal shall be made upon the department.

History: En. Sec. 11, Ch. 393, L. 1971; amd. Sec. 202, Ch. 253, L. 1974; amd. Sec. 10, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 253, Laws of 1974, substituted references to "department" for references to "board" in the third and fourth sentences; substituted "department" for "director of the board" at the end of the section; and made minor changes in phraseology and punctuation.

Chapter 271, Laws of 1974, inserted "or nonconforming use" after "obstruction" in three places; inserted "artificial" before "obstruction" in two places; and made minor changes in phraseology.

89-3512. Floodway obstruction removal fund. The state treasurer shall establish the floodway obstruction removal fund and credit to the fund for the removal of obstructions as provided in section 89-3508 (1), such money specifically appropriated by the legislature. The department may allocate money from the floodway obstruction removal fund for purposes provided in section 89-3508 (1).

History: En. Sec. 12, Ch. 393, L. 1971; amd. Sec. 203, Ch. 253, L. 1974.

Amendments

The 1974 amendment deleted "or reappropriated during any biennium" after "specifically appropriated" in the first sentence; substituted "department" for "Montana water resources board" in the second sentence; and made minor changes in phraseology and style.

89-3513. Penalties for violation. (1) Any person who violates section 6 [89-3506] of this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one hundred dollars ($100), or be imprisoned in the county jail for not more than ten (10) days, or be both so fined and imprisoned. Each day's continuance of a violation shall be deemed a separate and distinct offense.

History: En. Sec. 13, Ch. 393, L. 1971.

89-3514. Permit construed as added requirement—exception—immunity. (1) The granting of a permit under this act does not affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision, or of the United States but is an added requirement; however, if a political subdivision enacts, in harmony with the purposes of this act, permit issuance ordinances, regulations, or resolutions and land-use ordinances, regulations, or resolutions which meet or exceed the minimum standards of the board and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the board, no permit from the department is required; however, if the board determines that there is a

failure by a political subdivision to comply with the intent, purposes, and provisions of this act and the minimum standards adopted thereunder, the powers of the political subdivision may be suspended after hearing and the minimum standards adopted by the board shall be enforced by the department until such time as the board determines that the political subdivision will comply. The grant or denial of a permit does not have an effect on a remedy of a person at law or in equity; however, where it is shown that there is a wrongful failure to comply with this act, there is a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of a person bringing suit.

(2) An action for damages sustained because of injury caused by an obstruction for which a permit has been granted under this act may not be brought against the state, the board, a member of the board, or the department. This act does not interfere with the right of the United States to regulate interstate commerce or the navigable waters of the United States.

History: En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977.

Amendments

Chapter 253, Laws of 1974, substituted "or the department" for "or its employees or agents" at the end of the first sentence in subsection (2) and made minor changes in phraseology and punctuation.

Chapter 271, Laws of 1974, rewrote the portion of the first sentence in subsection (1) after the word "however" which read: "that if a political subdivision enacts and enforces land-use regulations which meet or exceed the minimum standards of the board, the board's recommendations in regard to artificial obstructions or nonconforming uses shall be advisory only"; deleted former subsection (2) which read: "No permit for the construction of any structure to be established within a designated floodway shall be granted by any political subdivision unless the applicant has first obtained the permit required by this act, or until the board acknowledges that such structure would not be an obstruction within the meaning of this act"; and made minor changes in phraseology.

The 1977 amendment made minor changes in punctuation.

Effective Date

Section 12 of Ch. 271, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

89-3515. Remedies not exclusive. The use of any one of the remedies or powers given to the board or the department in this act is not a bar to the exercise of any other remedy or power given by this act.

History: En. Sec. 15, Ch. 393, L. 1971; amd. Sec. 205, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted "or the department" after "board" and made a minor change in phraseology.

Separability Clause

Section 16 of Ch. 393, Laws 1971 read "If any section in this act or any part of any section is declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof."

CHAPTER 36—RENEWABLE RESOURCE DEVELOPMENT

Section 89-3601. Policy.
89-3602. Definitions.
89-3603. Renewable resource development loans.
89-3604. State renewable resource development grants.
89-3605. State and local renewable resource development loans.
89-3606. Renewable resource development bonds.
89-3607. Sinking fund account.

89-3608. Clearance fund account.
89-3609. Authorization of bonds.

89-3601. Policy. In the development of the natural resources of the state it is essential to distinguish between those which are and those which are not renewable; to make proper charges through taxation and otherwise for the depreciation of nonrenewable resources; and to invest a proper proportion of the tax and other revenues from nonrenewable resources in the replacement thereof with developments of renewable natural resources that will preserve for the citizens the benefit of the state's natural heritage and to ensure that the quality of existing public resources such as land, air, water, fish, wildlife and recreational opportunities are not significantly diminished by developments supported by this act. In order to finance such developments it is necessary to borrow in anticipation of the receipt of the revenues, so that replacement will not lag behind consumption. The purpose of this act is to provide a procedure for borrowing in the most economical way for this purpose, and to authorize the creation of debt to finance the first stage of the program, and to describe the types of projects, loans, and grants to be included in the program.

History: En. 89-3601 by Sec. 1, Ch. 533, L. 1975.

Title of Act

An act relating to the renewable resource development program of the state, providing the method of accounting for funds appropriated for the program, providing for the creation of state debt by the issuance of bonds in anticipation of the receipt of such funds, supported by the pledge of the full faith and credit of the state, providing for making renewable resource development loans and grants, and appropriating coal tax revenues and general fund money for these purposes.

89-3602. Definitions. Unless the context requires otherwise, in this act:

(1) "Renewable resource development program" means such developments in the public interest of renewable natural resources of the state as shall from time to time be acquired, constructed, and financed from funds appropriated to the accounts referred to in this section, and from the proceeds of bonds issued in anticipation of the receipt of these funds. Renewable resource developments shall, whenever practicable, be multiple use projects, and shall not significantly diminish the quality of existing public resources such as land, air, water, fish, wildlife and recreational opportunities.

(2) "Renewable resource development bonds" mean all series of bonds authorized by law to be issued pursuant to section 89-3606 to finance any part of the renewable resource development program, or to refund any such bonds.

(3) "Renewable resource development account", or "clearance fund account", mean a separate account which is created within the bond and insurance clearance fund established in section 79-410, and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the renewable resource development program, upon order of the board of natural resources and conservation under authority and within limitations provided by law.

(4) "Renewable resource development bond account", or "sinking fund account", mean a separate account which is created within the sinking fund established in section 79-410, and shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only as provided for herein.

(5) "Treasurer" means the state treasurer.

History: En. 89-3602 by Sec. 2, Ch. 533, L. 1975; amd. Sec. 1, Ch. 323, L. 1977.

Amendments

The 1977 amendment deleted "department of administration or the" before "board of natural resources" near the end of subdivision (3); and made minor changes in style.

89-3603. Renewable resource development loans. (1) The board of natural resources and conservation is authorized upon proper application and upon recommendation of the department of natural resources and conservation to make loans from the renewable resource development account established by this act to farmers and ranchers of the state of Montana who, without regard to their form of business organization:

(a) are citizens of the United States and are citizens and residents of the state of Montana;

(b) have sufficient farming or ranching training and experience which, in the opinion of the department, is sufficient to assure the likelihood of the success of the proposed operations; and

(c) are or will become owner-operators of farms or ranches.

(2) The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies and other subdivisions of state and federal government and of other interested and affected persons.

(3) The board may make the renewable resource development loans provided for by this section for any worthwhile project for the conservation, management, utilization, development, or preservation of the land, water, fish, wildlife, recreational, and other renewable resources in the state; and for the refinancing of existing indebtedness incurred in the expansion or rehabilitation of projects for those purposes.

(4) The board shall make no renewable resource development loan which exceeds the lesser of one hundred thousand dollars ($100,000), or eighty per cent (80%) of the fair market value of the security given therefor. In determining the fair market value for the security given for any loan, the department shall consider appraisals made by qualified appraisers and such other factors it considers important.

(5) The period for repayment of loans pursuant to this act may not exceed thirty (30) years.

(6) The board shall from time to time establish by rule the interest rate at which loans may be made under this act, provided that in no case may the rate be greater than one (1) percentage point greater than the prevailing interest rate on the renewable resource development bonds provided for in this act.

(7) The state shall have a lien upon a project constructed with money from the renewable resource development account for the amount of the

loan, together with the interest thereon. This lien may attach to all project facilities, equipment, easements, real property and property of any kind of nature owned by the debtor, including all water rights. The board shall file either a financing statement or a real estate mortgage covering the loan, its amount, terms and a description of the project with the county recorder of each county in which the project or any part thereof is located. The county recorder shall record the lien in a book kept for the recording of liens and it shall be indexed as other liens are required by law to be indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

(8) The board may adopt rules as required to govern the terms and conditions for making loans, security instruments, and agreements pursuant to this act.

(9) No member, officer, attorney, or other employee of the board or the department shall, directly or indirectly, be the beneficiary of or receive any fee, commission, gift, or other consideration for or in connection with any transaction or business under this act other than such salary, fee, or other compensation as he may receive as such member, officer, attorney, or employee. Any person violating any provision of this section shall, upon conviction thereof be punished by a fine of not more than two thousand dollars ($2,000) or imprisonment for not more than two (2) years or both.

(10) The department shall administer the loans made by the board pursuant to this act, and may accept and utilize voluntary and uncompensated services, and, with the consent of the agency concerned, utilize the officers, employees, equipment, and information of any agency of the federal government, or of any agency of Montana government, or of any political subdivision within Montana.

History: En. 89-3603 by Sec. 3, Ch. 533, L. 1975.

89-3604. State renewable resource development grants. (1) The department of natural resources and conservation may recommend to the governor that grants from the renewable resource development account provided for by this act be made to any department, agency, board, commission, or other division of state government. Unless specifically authorized by the legislature, no bond proceeds shall be used for the purpose of making grants; grants may only be made in such sums as may be deposited in the sinking fund account from the collection of the strip coal mines license tax payable under the provisions of section 84-1302 as provided in section 89-3607.

(2) The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies and other subdivisions of state and federal government and of other interested and affected persons.

(3) The governor shall submit those grant proposals having his approval to the legislature by the twentieth day of any legislative session.

Those grant proposals approved by the legislature shall be administered by the department.

(4) The grants provided for by this section may be made for the purchase, lease, or construction of projects for the conservation, management, utilization, development or preservation of the land, water, fish, wildlife, recreational and other renewable resources in the state; for the purpose of feasibility and design studies for such projects; for development of plans for the rehabilitation, expansion or modification of existing projects; and for such other and further similar purposes as the legislature may approve.

(5) The department may adopt rules as required to govern the terms and conditions for making grants pursuant to this section.

History: En. 89-3604 by Sec. 4, Ch. 533, L. 1975; amd. Sec. 2, Ch. 323, L. 1977.

Compiler's Notes

Section 84-1302, referred to herein, was repealed by Sec. 19, Ch. 525, Laws of 1975.

Amendments

The 1977 amendment substituted "department of natural resources and conservation" near the beginning of subsection (1) for "department of administration."

89-3605. State and local renewable resource development loans. (1) The department of natural resources and conservation may recommend to the governor that loans be made from the renewable resource development account established by this act to any department, agency, board, commission or other division of state government, or to any city, county, or other political subdivision or local government body of the state.

(2) The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies and other subdivisions of state and federal government and of other interested and affected persons.

(3) The governor shall submit those loan proposals having his approval to the legislature by the twentieth day of any legislative session. Those loan proposals approved by the legislature shall be administered by the department.

(4) The provisions of section 89-3603, subsection (2) and subsections (4) through (9) shall govern and apply to the local renewable resource loans herein provided for.

(5) Both the loans provided for by this section and the grants provided for by section 89-3604 may be submitted to the governor and approved by the legislature as may be necessary to jointly finance any project.

History: En. 89-3605 by Sec. 5, Ch. 533, L. 1975; amd. Sec. 3, Ch. 323, L. 1977.

Amendments

The 1977 amendment substituted "department of natural resources and conservation" near the beginning of subsection (1) for "department of administration."

89-3606. Renewable resource development bonds. (1) Within the limits authorized by section 89-3609, and within the further limitations in this section, the state board of examiners may issue and sell bonds of the state in such manner as it considers necessary and proper to finance

the renewable resource development program. The full faith and credit and taxing powers of the state shall be pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of such bonds shall be issued by the state board of examiners upon request of the board of natural resources and conservation, in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at such earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board shall determine subject to the limitations contained in this section.

(3) In the issuance of each series of such bonds the interest rates and the maturities and any mandatory redemption provisions thereof shall be established in such manner that the funds then specifically pledged and appropriated by law to the sinking fund account will in the judgment of the board be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects the state board of examiners is authorized to prescribe the form and terms of the bonds, and shall do whatever is lawful and necessary for their issuance and payment. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the state board of examiners, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(5) All proceeds of bonds issued hereunder, other than refunding bonds, shall be deposited in the clearance fund account, except that any principal and accrued interest received in repayment of the loans provided for in this act shall be deposited in the sinking fund account. All proceeds of refunding bonds shall be deposited in the sinking fund account and applied to the payment and redemption of outstanding bonds issued hereunder as directed by the board, whether at maturity or on any previous date on which they may be prepaid according to their terms.

(6) The state board of examiners is authorized to issue refunding bonds at such times and in such amounts, if any, as may be necessary to pay principal or interest due which cannot be paid from funds then on

hand in the sinking fund account. It may also issue refunding bonds to refund outstanding bonds before maturity, for the purpose of extending the maturities thereof so far as determined by the board to be necessary to assure that the funds then pledged to the sinking fund account will be sufficient for payment of principal and interest due in subsequent years. It may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of reducing the interest cost or the total amount of principal and interest payable thereon.

(7) No refunding bonds may be issued and sold more than 3 months before all bonds refunded thereby mature or are called for redemption unless the proceeds thereof, with any other funds in the sinking fund account which are needed and available for the purpose, or securities purchased from such proceeds and other funds, are deposited with a suitable banking institution within or outside the state, in escrow for the retirement of the refunded bonds at maturity or at a prior date or dates on which they have been called for redemption in accordance with their terms, in an amount and in a manner sufficient under the provisions securing the refunded bonds so that the state's obligation to pay the same, from sources other than the escrow fund, is discharged.

(8) No new debt may be created by the issuance of refunding bonds in accordance with this section, but such refunding bonds shall evidence the debt previously created and shall be secured by the pledge of the full faith and credit and taxing powers of the state and by the further provisions of this act in the same manner as the bonds refunded thereby.

History: En. 89-3606 by Sec. 6, Ch. 533, L. 1975; amd. Sec. 4, Ch. 323, L. 1977.

Amendments

The 1977 amendment deleted "the department of administration or" before "the board of natural resources" near the beginning of subsection (2); and made minor changes in style.

89-3607. Sinking fund account. (1) The state may by enactment of the legislature or the people levy, impose, assess, and pledge and appropriate to the sinking fund account any tax, charge, fee, rental or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other revenues pledged and appropriated to the sinking fund account, provided that the aggregate resources so pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds payable from that account, and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all such bonds shall be and remain irrevocable until they are fully paid.

(2) Money in the sinking fund account shall be used first to pay interest, principal and redemption premiums when due and payable with respect to renewable resource development bonds; second to accumulate a reserve for the further security of such payments, to the amount required each month to meet those payments due within 12 months thereafter; and third to restore the reserve to this amount after each payment.

(3) After the reserve provided for in subsection (2) above is in the sinking fund, money at any time received in the sinking fund in excess of that amount shall be transferred by the treasurer to the clearance fund account. If the balance at any time on hand in the sinking fund is not sufficient for compliance with subsection (2), and is not restored to the required amount within 3 months thereafter, from funds specifically pledged and appropriated to the sinking fund account, the treasurer shall transfer thereto from the general fund an amount sufficient to restore the required balance.

(4) The state pledges and appropriates and directs to be credited to the sinking fund account as received 2½% of all money from time to time received from the collection of the severance tax, and remaining after allocation of such tax to the trust fund established under section 5, Article IX, of the Montana constitution and such additional amount thereof, if any, as may be required from time to time to provide sufficient funds for the purposes stated in subsection (2) above; provided that no more than 2½% of such tax collections shall be deemed to be pledged for the purpose of section 89-3606, subsection (3).

History: En. 89-3607 by Sec. 7, Ch. 533, L. 1975; amd. Sec. 8, Ch. 540, L. 1977.

Amendments

The 1977 amendment substituted "severance tax" in subsection (4) for "strip coal mines license tax payable under the provisions of section 84-1302, or the equivalent provision of any severance tax enacted in lieu of such license tax"; inserted "and remaining after allocation of such tax to the trust fund established under section 5, article IX, of the Montana constitution" in subsection (4); and made minor changes in style.

89-3608. Clearance fund account. (1) In addition to any funds herein provided for the clearance fund account, the state may by enactment of the legislature or the people levy, impose, assess and pledge and appropriate to the clearance fund account any tax, charge, fee, rental or other income from any source.

(2) The state pledges and appropriates and directs to be credited from the general fund to the clearance fund account three hundred ninety thousand, nine hundred seventy-four dollars ($390,974) for its initial funding to be used and administered as provided for in this act. When sufficient funds have been accumulated in the clearance fund account from bond proceeds or as otherwise provided for in this act, the legislature directs that three hundred ninety thousand, nine hundred seventy-four dollars ($390,974) be appropriated from the clearance fund account and credited to the general fund.

(3) The costs of the board of examiners, the board of natural resources and conservation, and the department of natural resources and conservation incurred in the administration of this act shall be met from the clearance fund account moneys which shall from time to time as needed be transferred to an earmarked revenue fund established for that purpose.

(4) The board of examiners and the department of natural resources may, within the limits of appropriation made therefore, make necessary expenditures for the purchase or hire of such personnel, facilities, and

services as they may from time to time find necessary for the proper administration of this act.

History: En. 89-3608 by Sec. 8, Ch. 533, L. 1975; amd. Sec. 5, Ch. 323, L. 1977.

Amendments

The 1977 amendment deleted references to the department of administration following references to the department of natural resources in subsections (3) and (4); deleted subsections (5) through (7) which concerned use of the initial appropriations; and made minor changes in style.

89-3609. Authorization of bonds. The legislature, through the enactment of this law by a two-thirds (2/3) vote of the members of each house, authorizes the creation of state debt in an amount not to exceed five million dollars ($5,000,000), and the issuance and sale of renewable resource development bonds in this amount, for the purpose of providing funds appropriated to the clearance fund account for developments included in the renewable resource development program.

History: En. 89-3609 by Sec. 9, Ch. 533, L. 1975.

Separability Clause

Section 10 of Ch. 533, Laws 1975 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 37—PROTECTION OF LAKE AREAS

Section 89-3701. Declaration of policy.
89-3702. Definitions.
89-3703. Work for which permit required.
89-3704. Criteria for issuance of permits.
89-3705. Application for permits—procedure.
89-3706. Consideration of applications by governing body.
89-3707. Variance procedure.
89-3708. Restoration—property rights.
89-3709. Co-operation between governing bodies.
89-3710. Judicial enforcement and review.
89-3711. Penalty.
89-3712. Funding.

89-3701. Declaration of policy. The legislature finds and declares that the natural lakes of Montana are high in scenic and resource values and that the conservation and protection of these lakes is important to the continued value of lakeshore property as well as to the state's residents and visitors who use and enjoy the lakes. The legislature further declares that local governments should play the primary public roles in establishing policies to conserve and protect lakes. Local governments do not have adequate statutory powers to protect their lake areas, and it is the purpose of this act to confer such powers on local governments, provided that such powers are exercised to maintain public health, welfare, and safety.

History: En. 89-3701 by Sec. 1, Ch. 527, L. 1975.

Title of Act

An act to protect lakeshores by requiring a permit for any work which would alter or diminish a lake; requiring local governing bodies to adopt regulations governing the issuance of such permits; providing for variances, judicial review, and funding; and providing an effective date.

89-3702. Definitions. As used in this act—

(1) "Lake" means a body of standing water, and the area within its lakeshore, occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least one hundred sixty (160) acres for at least six (6) months in a year of average precipitation as such averages are determined by the United States Geological Survey, not used exclusively for agricultural purposes, and navigable by canoes and small boats. A local governing body may by resolution change the minimum size in the definition of a lake so that this act may apply to natural lakes in the county no smaller than twenty (20) acres in water surface area.

(2) "Lakeshore" is the perimeter of a lake when the lake is at mean annual high water elevation, including the land within twenty (20) horizontal feet from that high water elevation.

(3) "Mean annual high water elevation" is the mean average of the highest elevation of a lake in each of at least five (5) consecutive years, excluding any high levels caused by erratic or unusual weather or hydrological conditions. A highest elevation caused by operation of a dam or other impoundment counts toward the establishment of the mean annual high water elevation.

(4) "Local governing body" or "governing body" is that unit of local government authorized to administer the Montana Subdivision and Platting Act on the land adjoining a lake or part of a lake subject to this act.

History: En. 89-3702 by Sec. 2, Ch. 527, L. 1975.

89-3703. Work for which permit required. A person who proposes to do any work which will alter or diminish the course, current, or cross-sectional area of a lake or its lakeshore must first secure a permit for the work from the local governing body. Without limitation, the following activities are, when conducted below mean annual high water elevation, examples of work for which a permit is required: construction of channels and ditches; dredging of lake bottom areas to remove muck, silt, or weeds; lagooning; filling; constructing breakwaters of pilings; wharves and docks.

History: En. 89-3703 by Sec. 3, Ch. 527, L. 1975.

89-3704. Criteria for issuance of permits. (1) Before January 1, 1976, every governing body having jurisdiction over an area containing a lake shall adopt regulations, in the form of criteria, for the issuance or denial of permits for work in lakes. Where a planning board has been created under section 11-3801 for an area containing a lake, the governing body shall seek the recommendations of the planning board as to the regulations to be adopted under this act.

(2) The regulations shall favor issuance if the proposed work will not, during either its construction or its utilization:

(a) materially diminish water quality,

(b) materially diminish habitat for fish or wildlife,

(c) interfere with navigation or other lawful recreation,

(d) create a public nuisance, or

(e) create a visual impact discordant with natural scenic values, as determined by the local governing body, where such values form the predominant landscape elements.

(3) The local governing body may provide a summary procedure to permit work which it finds has a minimal or insignificant impact on a lakeshore.

(4) A governing body whose area contains more than one lake may adopt regulations in differing form for the various lakes, recognizing the physical and social differences between lakes.

(5) The requirements of subsection (2) of this section are minimum requirements and do not restrict a local governing body from adopting such stricter or additional regulations as may be authorized by other statutes.

(6) The department of natural resources and conservation may, upon petition of five (5) owners or thirty per cent (30%) of the owners of land abutting a lake, whichever is smaller, adopt such regulations for the particular lake. The department may then exercise the powers conferred upon a local governing body by this act until the governing body adopts the necessary regulations.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975.

89-3705. Application for permits—procedure. A person seeking a permit for work in a lake shall apply to the local governing body, and shall pay an application fee of ten dollars ($10) to the governing body. Where a planning board has been created under section 11-3801 for the area containing the lake in question, the governing body shall seek the recommendation of the planning board as to the compliance of the proposed work with the criteria for the issuance of a permit. The planning board shall report its recommendations to the governing body as to whether the proposed work conforms to the criteria for issuance of a permit, and may require the applicant to submit additional information before the board reports its recommendations. In areas where a planning board is not established, the functions of a planning board under this section shall be exercised by the local governing body.

History: En. 89-3705 by Sec. 5, Ch. 527, L. 1975.

89-3706. Consideration of applications by governing body. Unless the applicant agrees to an extension of time, the governing body shall grant or deny permission for the work within ninety (90) days of receiving an application for a permit. If the governing body finds that the proposed work conforms to the criteria for issuing a permit it shall issue a permit or conditional permit. If the governing body finds that the work does not conform to the criteria, it shall deny the application.

History: En. 89-3706 by Sec. 6, Ch. 527, L. 1975.

89-3707. Variance procedure. A governing body which proposes to grant a variance from its regulations under this act shall first prepare an environmental impact statement at the expense of the applicant which conforms to the requirements of regulations adopted pursuant to this act, distribute this statement to interested residents, and conduct a public hearing on the proposed action.

History: En. 89-3707 by Sec. 7, Ch. 527, L. 1975.

89-3708. Restoration—property rights. (1) A person who performs work in a lake after the effective date of this act without a permit for that work shall, if required by the local governing body or the district court, restore the lake to its condition before he disturbed it.

(2) Work or development authorized or approved under this act shall not create a vested property right in the permitted development, other than in the physical structure, if any, so developed.

History: En. 89-3708 by Sec. 8, Ch. 527, L. 1975.

89-3709. Co-operation between governing bodies. If a lake, as defined by this act, is located under the jurisdiction of more than one governing body, the governing bodies are empowered and encouraged to enter into agreements to effectuate the purposes of this act, and establish compatible criteria for denial or issuance of permits.

History: En. 89-3709 by Sec. 9, Ch. 527, L. 1975.

89-3710. Judicial enforcement and review. The district court may hear and decide the following cases arising under this act within the district:

(1) A complaint and petition of a governing body or an interested person for an order to restore a lake to its previous condition or to enjoin further work in a lake.

(2) A petition of an interested person for review of a final action of a governing body upon an application for a permit.

(3) A petition of an interested person for review of an action of a governing body in adopting or amending regulations.

History: En. 89-3710 by Sec. 10, Ch. 527, L. 1975.

89-3711. Penalty. A person who violates an order issued under this act or who knowingly violates a regulation made under this act commits a misdemeanor, and on conviction may be sentenced to thirty (30) days in the county jail or fined five hundred dollars ($500), or both. Fines collected under this section shall be paid to the general fund of the county

where the offense was committed for the purpose of administering this act.

History: En. 89-3711 by Sec. 11, Ch. 527, L. 1975.

Separability Clause

Section 12 of Ch. 527, Laws 1975 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the the invalid applications."

89-3712. Funding. In compliance with section 43-517, R. C. M. 1947, the administration of this act is declared a public purpose of a city or county which may be paid out of permit application fees collected under section 89-3705 and federal revenue sharing moneys.

History: En. 89-3712 by Sec. 13, Ch. 527, L. 1975.

Effective Date

Section 14 of Ch. 527, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved May 1, 1975.

TITLE 90—WEIGHTS—MEASURES AND GRADES—TIME—MONEY

Chapter 1. Standard weights and measures—state sealer, 90-153, 90-154, 90-156, 90-157, 90-159 to 90-160.1, 90-161 to 90-167, 90-169 to 90-192.
3. Bread—standard weight and loaf, Repealed—Section 3, Chapter 252, Laws of 1957; Section 24, Chapter 16, Laws of 1965; Section 27, Chapter 307, Laws of 1967.
7. Paints—labeling—laboratory analysis, 90-701 to 90-706.

CHAPTER 1—STANDARD WEIGHTS AND MEASURES—STATE SEALER

Section 90-153. Meaning of terms.
90-154. Systems of weights and measures.
90-156. State standards of weight and measure.
90-157. Field standards and equipment.
90-159. General powers and duties of department.
90-160. Specific powers and duties of department—rules.
90-160.1. Licensing of weighing devices.
90-161. Department—testing at state-supported institutions.
90-162. Department—general testing.
90-163. Department—investigations.
90-164. Department—inspection of packages.
90-165. Department—stop-use, stop-removal, and removal orders.
90-166. Department—disposition of correct and incorrect apparatus.
90-167. Department—police powers.
90-169. Duty of owners of incorrect apparatus.
90-170. Method of sale of commodities—general.
90-171. Method of sale of commodities—packages—declarations of quantity and origin—variations—exemptions.
90-172. Method of sale of commodities—declarations of unit price on random packages.
90-173. Method of sale of commodities—misleading packages.
90-174. Method of sale of commodities—advertising packages for sale.
90-175. Sale by net weight.
90-176. Misrepresentation of price.
90-177. Meat, poultry, and seafood.
90-178. Bread.
90-179. Butter, oleomargarine, and margarine.
90-180. Fluid dairy products.
90-181. Flour, corn meal, and hominy grits.
90-182. Bulk deliveries sold in terms of weight and delivered by vehicle.
90-183. Furnace and stove oil.
90-184. Berries and small fruits.
90-185. Construction of contracts.
90-186. Hindering or obstructing officer—penalties.
90-187. Impersonation of officer—penalties.
90-188. Offenses and penalties.
90-189. Injunction.
90-190. Presumptive evidence.
90-191. Validity of prosecutions.
90-192. Separability provision.

90-101 to 90-152. (4212 to 4229, 4230.1, 4232, 4234 to 4238, 4240 to 4264) **Repealed.**

Repeal

Sections 90-101 to 90-152 (Secs. 3120 to 3134, 3136, Pol. C. 1895; Sec. 1, p. 137, L. 1901; Sec. 1, Ch. 91, L. 1907; Secs. 1 to 4, 6 to 11, 13 to 16, 18 to 25, 28 to 31, Ch. 34, L. 1911; Secs. 1 to 4, 6 to 13,

15 to 21, Ch. 83, L. 1913; Secs. 1, 2, Ch. 19, L. 1917; Sec. 1, Ch. 74, L. 1921; Secs. 1, 3, Ch. 140, L. 1921; Sec. 2, Ch. 84, L. 1935; Secs. 1, 4 to 31, Ch. 146, L. 1939; Sec. 1, Ch. 27, L. 1941; Secs. 1 to 5, Ch. 110, L. 1945; Sec. 1, Ch. 174, L. 1949; Sec. 1, Ch. 130, L. 1951; Secs. 1 to 6, Ch. 143, L. 1951; Sec. 2, Ch. 158, L. 1953; Sec. 1, Ch. 131, L. 1955; Sec. 1, Ch. 84, L. 1957; Sec. 1, Ch. 90, L. 1957; Sec. 1, Ch. 157, L. 1957; Sec. 1, Ch. 59, L. 1959; Sec. 1, Ch. 78, L. 1959; Sec. 1, Ch. 147, L. 1961; Sec. 44, Ch. 177, L. 1965), relating to standard weights and measures and the state sealer of weights and measures, were repealed by Sec. 24, Ch. 160, Laws 1965 and Sec. 43, Ch. 99, Laws 1969. For present law, see secs. 90-153 to 90-192.

90-153. Meaning of terms. Unless the context requires otherwise, in this act:

(1) "Person" includes individuals, partnerships, corporations, companies, societies, and associations.

(2) "Weight," "measure," and "weights and measures" mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with those instruments and devices. The terms do not include meters for the measurement of electricity, gas (natural or manufactured), or water when they are operated in a public utility system. None of the provisions of this act apply to electricity, gas, or water meters operated in a public utility system or to any appliances or accessories associated with them.

(3) "Sell" and "sale" include, but are not limited to, barter and exchange.

(4) "Department" means the department of business regulation provided for in Title 82A, chapter 4.

(5) "Intrastate commerce" means any commerce or trade that is begun, carried on, and completed wholly in this state, and the phrase "introduced into intrastate commerce" defines the time and place at which the first sale and delivery of a commodity is made in this state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(6) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of this act. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, is a commodity in package form.

(7) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(8) "Nonconsumer package" or "package of nonconsumer commodity" means a commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(9) "Barrel," when used in connection with fermented liquor, means a unit of thirty-one (31) gallons.

(10) "Ton" means a unit of two thousand (2,000) pounds avoirdupois weight.

(11) "Cord," when used in connection with wood intended for fuel purposes, means the amount of wood that is contained in a space of one hundred twenty-eight (128) cubic feet when the wood is ranked and well stowed.

(12) "Weight," when used in connection with any commodity, means net weight.

History: En. Sec. 1, Ch. 99, L. 1969; amd. Sec. 146, Ch. 431, L. 1975.

Title of Act

An act relating to weights and measures, providing for a state sealer of weights and measures, providing for a system of weights and measures, regulating the sale of commodities by weight and measure, providing for enforcement: repealing sections 90-101 through 90-119, 90-120 through 90-129, 90-131, 90-133 through 90-143, 90-145 through 90-152, 90-601 through 90-620, 3-202, 3-2432, 3-2433, 11-958, 50-603, 50-408, 50-409, R. C. M., 1947.

Amendments

The 1975 amendment substituted in subdivision (1) "'Person' includes individuals" for "The word 'person' shall be construed to mean both the plural and singular, as the case demands, and shall include individuals"; substituted the last sentence in subdivision (2) for "Such electricity, gas, and water meters are hereby specifically excluded from the purview of this act, and none of the provisions of this act shall be construed to apply to such meters or any appliances or accessories associated therewith"; substituted "'Sell' and 'sale' include, but are not limited to" in subdivision (3) for "The words 'sell' and 'sale' shall be construed to mean"; deleted former subdivision (4) which read "The term 'sealer' shall be construed to mean the state sealer of weights and measures"; deleted former subdivision (5) which read: "The terms 'chief sealer' and 'deputy sealer' shall be construed to mean, respectively, the state chief sealer of weights and measures and the deputy sealer of weights and measures"; inserted subdivision (4); redesignated former subdivisions (6) to (9) as subdivisions (5) to (8); added subdivisions (9) to (12); and made minor changes in phraseology.

90-154. Systems of weights and measures. The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state of Montana. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the national bureau of standards are recognized and shall govern weighing and measuring equipment and transactions in the state.

History: En. Sec. 2, Ch. 99, L. 1969.

90-155. Repealed.

Repeal

Section 90-155 (Sec. 3, Ch. 99, L. 1969), defining the units of measure of "barrel" and "ton" and "cord" was repealed by Sec. 176, Ch. 431, Laws of 1975.

90-156. State standards of weight and measure. Those weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by this state for use as state standards shall, when they have been

certified as being satisfactory for use as such by the national bureau of standards, be the state standards of weight and measure. The state standards shall be kept in a safe and suitable place in the office or laboratory of the department. They shall not be removed from there except for repairs or for certification, and they shall be submitted at least once in ten (10) years to the national bureau of standards for certification.

History: En. Sec. 4, Ch. 99, L. 1969; amd. Sec. 147, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department" near the end of the section for "state division of weights and measures"; and made minor changes in phraseology, punctuation and style.

90-157. Field standards and equipment. In addition to the state standards provided for in section 4 [90-156] of this act, there shall be supplied by the state such "field standards" and such equipment as may be found necessary to carry out the provisions of this act. The field standards shall be verified upon their initial receipt and at least once each year thereafter by comparison with the state standards.

History: En. Sec. 5, Ch. 99, L. 1969.

90-158. Repealed.

Repeal

Section 90-158 (Sec. 6, Ch. 99, L. 1969), relating to the sealers of weights and measures, was repealed by Sec. 176, Ch. 431, Laws of 1975.

90-159. General powers and duties of department. The department shall have the custody of the state standards of weight and measure and of the other standards and equipment provided for by this act, and shall keep accurate records of them. The department shall enforce the provisions of this act. It shall supervise the weights and measures offered for sale, sold, or in use in this state.

History: En. Sec. 7, Ch. 99, L. 1969; amd. Sec. 148, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department" for "sealer" throughout the section; and made minor changes in phraseology.

90-160. Specific powers and duties of department—rules. The department shall adopt from time to time reasonable rules for the enforcement of this act, which rules have the effect of law. These rules may include (1) schedules of fees for testing and certification, (2) standards of net weight, measure, or count, and reasonable standards of fill for any commodity in package form, (3) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by the department in the discharge of its official duties, (4) exemptions from the sealing or marking requirements of section 90-166 with respect to weights and measures of a character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus involved, and (5) rules governing the voluntary registration of servicemen and service agencies. These rules shall include specifications, tolerances, and other technical requirements for

weights and measures subject to inspection and testing under section 90-162, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those (1) that are not accurate, (2) that are not reasonably permanent in their adjustment or will not repeat their indications correctly, or (3) that facilitate the perpetration of fraud. The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments thereto, as recommended by the national bureau of standards and published in national bureau of standards handbook 44 and supplements thereto, or in any publication revising or superseding handbook 44, are the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of this state, except in so far as specifically modified, amended, or rejected by a rule issued by the department. An apparatus shall be considered to be "correct" when it conforms to all applicable requirements adopted as specified in this section. Other apparatus shall be considered to be "incorrect."

History: En. Sec. 8, Ch. 99, L. 1969; amd. Sec. 149, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department" for "sealer" and "rules" for "regulations" throughout the section; substituted "measures subject to inspection and testing under section 90-162" in the third sentence for "measures of the character of those specified in section 10 of this act"; deleted "that are of such construction that they are faulty" after "(2)" in the third sentence; and made minor changes in phraseology, punctuation and style.

90-160.1. Licensing of weighing devices. No person shall knowingly operate or use any unlicensed weighing devices in trade or commerce for ascertaining the weight of any commodity. Such license shall be obtained by making application to the department of business regulation upon such blank forms to be provided by the division of weights and measures, each license should include at least one (1) inspection per year. Every application shall be accompanied by the proper fee as established by this section.

WEIGHING DEVICES

Capacity	Fees
499 pounds or less	$ 2.50
500 pounds through 1999 pounds	4.00
2,000 pounds through 7,999 pounds	10.00
8,000 pounds through 40,000 pounds	20.00
40,001 pounds or more	35.00

The capacity of a weighing device shall be determined by the manufacturer's rated capacity.

All licenses shall be annual and shall expire on December 31.

Any person failing to pay the renewal license fee when due as required by this act shall forfeit the right to use the weighing device, and it shall be taken out of service by the division of weights and measures.

History: En. 90-160.1 by Sec. 1, Ch. 244, L. 1973.

Title of Act

An act to prohibit the use of weighing devices in trade or commerce which are not licensed by the division of business

regulation; establishing license fees; and providing an effective date.

Effective Date

Section 2 of Ch. 244, Laws 1973 read "This act shall be effective January 1, 1974." Approved March 9, 1973.

90-161. Department—testing at state-supported institutions. The department shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting its findings, in writing, to the executive officer of the institution concerned.

History: En. Sec. 9, Ch. 99, L. 1969; amd. Sec. 150, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department" for "sealer"; deleted "to the supervisory board and" before "to the executive officer"; and made a minor change in phraseology.

90-162. Department—general testing. When not otherwise provided by law, the department may inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. The department, within a twelve-month period or less frequently if in accordance with a schedule issued by it, and as often as it considers necessary, shall inspect and test, to ascertain if they are correct, all weights and measures commercially used (1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or of count, or (2) in computing the basic charge or payment for services rendered on the basis of weight, measure, or of count. With respect to single-service devices designed to be used commercially only once and to be then discarded and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of the devices; and the lots of which the samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on the samples. An itinerant peddler or hawker, using weights and measures, shall register his name and address with the department, in order that his equipment can be tested in accordance with the provisions of this law.

History: En. Sec. 10, Ch. 99, L. 1969; amd. Sec. 151, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department" for "sealer" in the first half of the section and for "chief sealer of weights and measures" in the last sentence; and made minor changes in phraseology.

90-163. Department—investigations. The department shall investigate complaints made to it concerning violations of this act. It shall, upon its own initiative, conduct those investigations it considers appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of this act and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

History: En. Sec. 11, Ch. 99, L. 1969; amd. Sec. 152, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department" for "sealer"; and made minor changes in phraseology.

90-164. Department—inspection of packages. The department shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether they contain the amounts represented and whether they be kept, offered, or exposed for sale or sold in accordance with law. When those packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, offered, or exposed for sale in violation of law, the department may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the department may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of that lot. A person may not:

(1) sell, or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless the package or amount of commodity has been brought into full compliance with all legal requirements, or

(2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the department.

History: En. Sec. 12, Ch. 99, L. 1969; amd. Sec. 153, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department" for "sealer" throughout the section; and made minor changes in phraseology.

90-165. Department—stop-use, stop-removal, and removal orders. The department may issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue stop-removal orders and removal orders with respect to packages or amounts or commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of enforcement of this act it considers it necessary or expedient to issue those orders. A person may not use, remove from the premises specified, or fail to remove from the premises specified, any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under this section.

History: En. Sec. 13, Ch. 99, L. 1969; amd. Sec. 154, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department" for "sealer" throughout the section; and made minor changes in phraseology.

90-166. Department—disposition of correct and incorrect apparatus. The department shall approve for use, and seal or mark with appropriate devices, those weights and measures which it finds upon inspection and test to be "correct" as defined in section 90-160, and shall reject and mark or tag as "rejected" those weights and measures which it finds, upon

inspection or test, to be "incorrect" as defined in section 90-160, but which in its best judgment are susceptible of satisfactory repair. Sealing or marking are not required with respect to those weights and measures which may be exempted therefrom by a rule of the department issued under section 90-160. The department shall condemn, and may seize and destroy, weights and measures found to be incorrect that, in its best judgment, are not susceptible of satisfactory repair. Weights and measures that have been rejected may be confiscated and may be destroyed by the department if not corrected as required by section 90-169, or if used or disposed of contrary to the requirements of section 90-169.

History: En. Sec. 14, Ch. 99, L. 1969; amd. Sec. 155, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department" for "sealer" throughout the section; substituted "rule" for "regulation" in the second sentence; and made minor changes in phraseology and style.

90-167. Department—police powers. In enforcing the provisions of this act or any other law pertaining to weights and measures, the department may, in the manner provided by law for peace officers, arrest violators, conduct searches and inspections, and seize for use as evidence incorrect or unsealed weights and measures or packages of commodities unlawfully used, possessed, offered, or exposed for sale or unlawfully sold.

History: En. Sec. 15, Ch. 99, L. 1969; amd. Sec. 156, Ch. 431, L. 1975.

Amendments

The 1975 amendment rewrote this section, which read: "With respect to the enforcement of this act and any other acts dealing with weights and measures that he is or may be empowered to enforce, the sealer is hereby vested with special police powers, and is authorized to arrest, without formal warrant, any violator of the said acts, and to seize for use as evidence, without formal warrant, incorrect or unsealed weights and measures or amounts of packages of commodity found to be used, retained, offered, or exposed for sale or sold in violation of law. In the performance of his official duties, the sealer is authorized to enter and go into or upon, without formal warrant, any structure or premises, and to stop any person whatsoever and to require him to proceed, with or without any vehicle of which he may be in charge, to some place which the sealer may specify."

90-168. Repealed.

Repeal

Section 90-168 (Sec. 16, Ch. 99, L. 1969), relating to the powers and duties of the chief sealer and deputy sealers, was repealed by Sec. 176, Ch. 431, Laws of 1975.

90-169. Duty of owners of incorrect apparatus. Weights and measures that have been rejected under the authority of the department shall remain subject to the control of the department until suitable repair or disposition of them has been made as required by this section. The owner of rejected weights and measures shall correct them within thirty (30) days or a longer period as may be authorized by the department. In place of this, the owner may dispose of them, but only in a manner specifically authorized by the department. Weights and measures that have been rejected may not again be used commercially until they have been officially re-examined and found to be correct, or until specific written permission for that use is issued by the department, or until the rejection tag has been removed and the rejected device repaired and placed in service by

a person properly registered to perform those acts under a rule issued by the department for the registration of weights and measures servicemen and service agencies.

History: En. Sec. 17, Ch. 99, L. 1969; amd. Sec. 157, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department" for "sealer" and "rejecting authority" throughout the section; substituted "rule" for "regulation" near the end of the section; and made minor changes in phraseology.

90-170. Method of sale of commodities—general. Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this act, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count. Liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if those methods give accurate information as to the quantity of commodity sold. This section does not apply:

(1) to commodities when sold for immediate consumption on the premises where sold,

(2) to vegetables when sold by the head or bunch,

(3) to commodities in containers standardized by a law of this state or by federal law,

(4) to commodities in package form when there exists a general consumer usage to express the quantity in some other manner,

(5) to concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure, or

(6) to unprocessed vegetable and animal fertilizer when sold by cubic measure.

The department may adopt reasonable rules necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

History: En. Sec. 18, Ch. 99, L. 1969; amd. Sec. 158, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "The department may adopt reasonable rules necessary" for "The sealer shall issue such reasonable regulations as are necessary" in the final paragraph; and made minor changes in phraseology and style.

90-171. Method of sale of commodities—packages—declarations of quantity and origin—variations—exemptions. (1) Except as otherwise provided in this act, a commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce, shall bear on the outside of the package definite, plain, and conspicuous declarations of: (a) the identity of the commodity in the package unless it can easily be identified through the wrapper or container, (b) the net quantity of the contents in terms of weight, measure, or count, and (c) in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by rules adopted by the department.

(2) In connection with the declaration required under subsection 1(b), neither the qualifying term "when packed," nor words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package may be used.

(3) Under subsection 1 (b) the department shall, by rule, establish: (a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

(4) The marking provisions of this section do not apply to unwrapped loaves of bread or to berries and small fruits, sold in conformance with the applicable provisions of this act.

History: En. Sec. 19, Ch. 99, L. 1969; amd. Sec. 159, Ch. 431, L. 1975.

Amendments

The 1975 amendment divided the section into three subsections; substituted "department" for "sealer" and "rule" for "regulation" in subsections (1) and (3); added subsection (4); and made minor changes in phraseology, punctuation and style.

90-172. Method of sale of commodities—declarations of unit price on random packages. In addition to the declarations required by section 19 [90-171] of this act, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

History: En. Sec. 20, Ch. 99, L. 1969.

90-173. Method of sale of commodities—misleading packages. A commodity in package form may not be wrapped, or in a container made, formed, or filled, so as to mislead the purchaser as to the quantity of the contents of the package. The contents of a container may not fall below a reasonable standard of fill which may be prescribed for that commodity by the department.

History: En. Sec. 21, Ch. 99, L. 1969; amd. Sec. 160, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department" for "sealer"; and made minor changes in phraseology.

90-174. Method of sale of commodities—advertising packages for sale. Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or regulation to appear on the package: provided, that, where the law or regulation requires a dual declaration of net quantity

to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure (the declaration that is required to appear first and without parenthesis on the package) need appear in the advertisement: And provided further, that there shall not be included as part of the declaration required under this section such qualifying terms as "when packed," "minimum," "not less than," or any other terms of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in the package.

History: En. Sec. 22, Ch. 99, L. 1969.

90-175. Sale by net weight. When a commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed.

History: En. Sec. 23, Ch. 99, L. 1969; amd. Sec. 161, Ch. 431, L. 1975.

Amendments

The 1975 amendment deleted a first sentence reading "The word 'weight' as used in this act in connection with any commodity shall mean net weight"; and made a minor change in phraseology.

90-176. Misrepresentation of price. Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at last one-half (½) the height and width of the numerals representing the whole cents.

History: En. Sec. 24, Ch. 99, L. 1969.

90-177. Meat, poultry, and seafood. Except for immediate consumption on the premises where sold, or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts), and all seafood except shellfish, offered or exposed for sale or sold as food shall be offered or exposed for sale and sold by weight. When meat, poultry, or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight, and the quantity representation may be the total weight of the product or combination, and a quantity representation need not be made for each of the several elements of the product or combination.

History: En. Sec. 25, Ch. 99, L. 1969.

90-178. Bread. Each loaf of bread and each unit of a twin or multiple loaf of bread produced or procured for sale, kept, offered, exposed for sale,

or sold, whether or not the bread is wrapped or sliced, shall weigh one-half (½) pound, one (1) pound, one and one-half (1½) pounds, or a multiple of one (1) pound, avoirdupois weight, within reasonable variations or tolerances that shall be adopted by rules of the department. This section does not apply to biscuits, buns, or rolls weighing eight (8) ounces or less, or to "stale bread" sold and expressly represented at the time of sale as such.

History: En. Sec. 26, Ch. 99, L. 1969; amd. Sec. 162, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "adopted by rules of the department" at the end of the first sentence for "promulgated by regulation by the sealer"; deleted from the end of the last sentence "and that the marketing provisions of section 19 shall not apply to unwrapped loaves of bread"; and made minor changes in phraseology, punctuation and style.

90-179. Butter, oleomargarine, and margarine. Butter, oleomargarine, and margarine shall be offered and exposed for sale and sold by weight, and only in units of one-fourth (¼) pound, one-half (½) pound, one (1) pound, or multiples of one (1) pound, avoirdupois weight.

History: En. Sec. 27, Ch. 99, L. 1969.

90-180. Fluid dairy products. All fluid dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream, and buttermilk shall be packaged for retail sale only in units of less than 1 gill, units of 1 gill, one-half liquid pint, 10 fluid ounces, 1 liquid pint, 1 liquid quart, one-half gallon, 3 liquid quarts, 1 gallon, 1½ gallons, 2 gallons, 2½ gallons, or multiples of 1 gallon.

History: En. Sec. 28, Ch. 99, L. 1969; amd. Sec. 1, Ch. 76, L. 1977.

Amendments

The 1977 amendment inserted "3 liquid quarts"; and made minor changes in phraseology, punctuation and style.

Legislative Purpose

Purpose of legislature in enacting this section was to control fraud as related to short weighting or filling of containers. Cloverdale Foods Co. v. State, — M —, 544 P 2d 803.

DECISIONS UNDER FORMER LAW

Three-Quart Containers

Term "units" as used in this section is not restrictive to absolute units, but means divisible parts or multiples thereof; therefore, provision that milk containers may be sized in "multiples of one (1) gallon" does not forbid the sale of milk in three-quart containers. Cloverdale Foods Co. v. State, — M —, 544 P 2d 803.

90-181. Flour, corn meal, and hominy grits. When in package form, and when packed, kept, offered, or exposed for sale or sold, wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meal, and hominy grits shall be packaged only in units of two (2), five (5), ten (10), twenty-five (25), fifty (50), or one hundred (100) pounds, avoirdupois weight: provided, that packages in units of less than two (2) pounds or more than one hundred (100) pounds shall be permitted.

History: En. Sec. 29, Ch. 99, L. 1969.

90-182. Bulk deliveries sold in terms of weight and delivered by vehicle. When a vehicle delivers to an individual purchaser a commodity in bulk, and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or by means of other indelible marking equipment and, in clarity, equal to type or printing: (1) the name and address of the vendor, (2) the name and address of the purchaser, and (3) the net weight of the delivery expressed in pounds. If the net weight is derived from determinations of gross and tare weights, the gross and tare weights also shall be stated in terms of pounds. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered, on demand, to the department. If the department desires to retain it as evidence, it shall issue a weight slip in place of the ticket for delivery to the purchaser. If the purchaser himself carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him.

History: En. Sec. 30, Ch. 99, L. 1969; amd. Sec. 163, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department" at the end of the third sentence and at the beginning of the fourth sentence for references to the sealer, chief sealer, or deputy sealer; and made minor changes in punctuation and phraseology.

90-183. Furnace and stove oil. All furnace and stove oil shall be sold by liquid measure or by net weight in accordance with the provisions of section 18 [90-170] of this act. In the case of each delivery of such liquid fuel not in package form and in an amount greater than ten (10) gallons in the case of sale by liquid measure or one hundred (100) pounds in the case of sale by weight, there shall be rendered to the purchaser, either (a) at the time of delivery or (b) within a period mutually agreed upon in writing or otherwise between the vendor and the purchaser, a delivery ticket or a written statement on which, in ink or by means of other indelible marking equipment and, in clarity, equal to type or printing, there shall be clearly stated (1) the name and address of the vendor, (2) the name and address of the purchaser, (3) the identity of the type of fuel comprising the delivery, (4) the unit price (that is, the price per gallon or per pound, as the case may be) of the fuel delivered, (5) in the case of sale by liquid measure, the liquid volume of the delivery, together with any meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its binary or decimal subdivisions, and (6) in the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

History: En. Sec. 31, Ch. 99, L. 1969.

90-184. Berries and small fruits. Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open

containers having capacities of one-half (½) dry pint, one (1) dry pint, or one (1) dry quart.

History: En. Sec. 32, Ch. 99, L. 1969; amd. Sec. 164, Ch. 431, L. 1975.

Amendments

The 1975 amendment deleted "provided, that the marking provisions of section 19 of this act shall not apply to such containers" at the end of the section.

90-185. Construction of contracts. Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in sections 2 and 3 [90-154 and 90-155] of this act, and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

History: En. Sec. 33, Ch. 99, L. 1969.

Compiler's Notes

Section 3 [90-155] referred to in this section was repealed by Sec. 176, Ch. 431, Laws of 1975.

90-186. Hindering or obstructing officer—penalties. A person who hinders or obstructs in any way the department, in the performance of its official duties is guilty of a misdemeanor, and upon conviction shall be fined not less than twenty dollars ($20) or more than two hundred dollars ($200), or imprisoned not more than three (3) months, or both fined and imprisoned.

History: En. Sec. 34, Ch. 99, L. 1969; amd. Sec. 165, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department" for "sealer, the chief sealer, or any one of the deputy sealers"; and made minor changes in phraseology, style and punctuation.

90-187. Impersonation of officer—penalties. A person who impersonates in any way a person charged with enforcement of this act by the department, by the use of its seal or a counterfeit of its seal, or in any other manner, is guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars ($100) or more than five hundred dollars ($500), or imprisoned for not more than one (1) year, or both fined and imprisoned.

History: En. Sec. 35, Ch. 99, L. 1969; amd. Sec. 166, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "a person charged with enforcement of this act by the department" for "the sealer, the chief sealer, or any one of the deputy sealers"; and made minor changes in phraseology and style.

90-188. Offenses and penalties. (1) A person may not:

(a) Use or possess for the purpose of using for a commercial purpose specified in section 90-162, sell, offer, or expose for sale or hire, or possess for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure;

(b) Use, or possess for the purpose of current use for a commercial purpose specified in section 90-162, a weight or measure that does not bear a seal or mark specified in section 90-166, unless that weight or measure has been exempted from testing by section 90-162 or by a rule of the department issued under section 90-160, or unless the device has

been placed in service as provided by a rule of the department issued under section 90-160. A person using weighing or measuring devices subject to this act must report to the department, in writing, the number and location of the weighing or measuring device and must promptly report the installation of any new weighing or measuring device;

(c) Dispose of a rejected or condemned weight or measure in a manner contrary to law or rule;

(d) Remove from a weight or measure, contrary to law or rule, any tag, seal, or mark placed on it by the appropriate authority;

(e) Sell, or offer or expose for sale, less than the quantity he represents of a commodity, thing, or service;

(f) Take more than the quantity he represents of a commodity, thing, or service, when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(g) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell a commodity, thing, or service in a condition or manner contrary to law or rule;

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer;

(i) Violate a provision of this act or of the rules adopted under this act for which a specific penalty is not prescribed.

(2) A person who violates, or who knowingly allows an employee or agent to violate, this section is guilty of a misdemeanor and, upon a first conviction, shall be fined not less than twenty dollars ($20) or more than two hundred dollars ($200), or imprisoned for not more than three (3) months, or both fined and imprisoned. Upon a second or subsequent conviction, he shall be fined not less than fifty dollars ($50) or more than five hundred dollars ($500), or imprisoned for not more than one (1) year, or both fined and imprisoned.

History: En. Sec. 36, Ch. 99, L. 1969; amd. Sec. 167, Ch. 431, L. 1975.

Amendments

The 1975 amendment deleted a former first paragraph reading "Any person who, by himself, or by his servant or agent, or as the servant or agent of another person, performs any one of the acts enumerated in subparagraphs (1) through (9) of this section shall be guilty of a misdemeanor and, upon a first conviction thereof, shall be punished by a fine of not less than twenty dollars ($20.00) or more than two hundred dollars ($200.00), or by imprisonment for not more than three (3) months, or by both such fine and imprisonment. Upon a second or subsequent conviction thereof, he shall be punished by a fine of not less than fifty dollars ($50.00) or more than five hundred dollars ($500.00) or by imprisonment for not more than one (1) year, or by both such fine and imprisonment"; inserted the subsection (1) designation; inserted "A person may not" at the beginning of subsection (1); redesignated former subdivisions (1) to (9) as subdivisions (1)(a) to (1)(i); substituted "department" for "sealer" in subdivision (i)(b); substituted "rule" for "regulation" throughout the section; added subsection (2); and made minor changes in phraseology and style.

Conduct Amounting to False Pretenses

Misdemeanors under former Packaged Commodities Offered for Sale Act and former False Weight and Measures Act were not lesser included offenses of felony of obtaining money by false pretenses since above acts required "sale" while felony statute does not; state has discretionary power to choose under which law it will charge defendant and the fact

that two statutes overlap in prohibiting same act does not mean that the defendant can only be prosecuted under statute providing lesser penalty. State v. Lagerquist, 152 M 21, 445 P 2d 910.

90-189. Injunction. The department may apply to any court of competent jurisdiction for, and that court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining a person from violating any provision of this act.

History: En. Sec. 37, Ch. 99, L. 1969; amd. Sec. 168, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department" for "sealer"; and made minor changes in phraseology.

90-190. Presumptive evidence. For the purposes of this act, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand, or vehicle in which or from which is shown that buying or selling is commonly carried on, is, in the absence of credible evidence to the contrary, presumptive proof of the regular use of that weight or measure or weighing or measuring device for commercial purposes and of the use by the person in charge of the building, enclosure, stand, or vehicle.

History: En. Sec. 38, Ch. 99, L. 1975; amd. Sec. 169, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "credible evidence" for "conclusive evidence"; and made minor changes in phraseology.

Repealing Clause

Section 176 of Ch. 431, Laws 1975 read: "Sections 5-108, 5-601 through 5-603, 5-606, 5-608, 5-902, 5-1009 through 5-1011, 5-1013, 5-1119 through 5-1121, 5-1301 through 5-1311, 7-152, 27-404, 27-418, 27-420, 27-425, 27-428, 27-429, 47-225, 82-1001 through 82-1011, 82A-402, 82A-403, 90-155, 90-158, 90-168, 90-193, 90-194, 90-621 are repealed."

90-191. Validity of prosecutions. Prosecutions for violation of any provision of this act are declared to be valid and proper, notwithstanding the existence of any other valid general or specific act of this state dealing with matters that may be the same as or similar to those covered by this act.

History: En. Sec. 39, Ch. 99, L. 1969.

90-192. Separability provision. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby.

History: En. Sec. 40, Ch. 99, L. 1969.

Repealing Clause

Section 43 of Ch. 99, Laws 1969 read "Sections 90-101 through 90-119, 90-120 through 90-129, 90-131, 90-133 through 90-143, 90-145 through 90-152, 90-601 through 90-620, 3-202, 3-2432, 3-2433, 11-958, 50-603, 50-408, 50-409, R. C. M., 1947, are repealed."

90-193, 90-194. Repealed.

Repeal

Sections 90-193, 90-194 (Secs. 41, 42, Ch. 99, L. 1969), repealing conflicting laws and establishing the official citation as the "Weights and Measures Act of Montana," was repealed by Sec. 176, Ch. 431, Laws of 1975.

CHAPTER 2—APPLES, GRADES AND BOXES

Section 90-201 to 90-206. [Transferred.]

90-201 to 90-206. [Transferred.]

Compiler's Notes

Sections 171 and 172, Ch. 218, Laws of 1974 renumbered these sections as secs. 3-3402 to 3-3407.

CHAPTER 3—BREAD—STANDARD WEIGHT AND LOAF

(Repealed—Section 3, Chapter 252, Laws of 1957; Section 24, Chapter 16, Laws of 1965; Section 27, Chapter 307, Laws of 1967)

90-301. (4273) Repealed.

Repeal

This section (Sec. 1, Ch. 155, L. 1919; Sec. 2, Ch. 252, L. 1957), relating to standard weights for bread, was repealed by Sec. 24, Ch. 160, Laws 1965. For present law, see sec. 90-178.

90-301.1. Repealed.

Repeal

This section (Sec. 1, Ch. 252, L. 1957), relating to the manufacture of bakery products, was repealed by Sec. 27, Ch. 307, Laws 1967.

90-304. (4276) Repealed.

Repeal

This section (Sec. 4, Ch. 155, L. 1919), relating to the violation of laws pertaining to the manufacture and sale of bread, was repealed by Sec. 27, Ch. 307, Laws 1967.

CHAPTER 4—TIME

90-403. (4279) Repealed.

Repeal

Section 90-403 (Sec. 3142, Pol. C. 1895), defining "year" and its parts, was repealed by Section 31, Ch. 309, Laws 1977.

CHAPTER 6—PACKAGED COMMODITIES OFFERED FOR SALE

90-601 to 90-620. Repealed.

Repeal

Sections 90-601 to 90-620 (Secs. 1 to 20, Ch. 160, L. 1965), relating to packaged commodities offered for sale, were repealed by Sec. 43, Ch. 99, Laws 1969. For present law, see secs. 90-153, 90-163 to 90-165, 90-167, 90-170 to 90-178, 90-184 to 90-186, 90-188 and 90-189.

90-621. Repealed.

Repeal

Section 90-621 (Sec. 23, Ch. 160, L. 1965), relating to the supplementary nature of Chapter 6, was repealed by Sec. 176, Ch. 431, Laws of 1975.

CHAPTER 7—PAINTS—LABELING—LABORATORY ANALYSIS

Section 90-701. Intrastate transactions with paints, etc.—label—contents of label.
90-702. Enforcement of chapter.

90-703. Designation of laboratory for analysis—report of analysis.
90-704. County attorney—duties regarding chapter.
90-705. Possession as prima facie evidence.
90-706. Penalty for violations.

90-701. Intrastate transactions with paints, etc.—label—contents of label. A person, firm, or corporation, who manufactures for sale, sells, offers for sale, or ships in intrastate transactions within the state, any paint, mixed paint, paste paint, or compound intended for use as paint, or any varnish, decorative protective coatings, or additives for wood, metal, concrete, or roof coatings, but excluding artists' colors, waxes, and polishes, shall label it in a clear and distinct manner. The label shall recite a full analysis of the content with a specification of pigment and vehicle, including the analysis by percentage of the pigment content and the analysis by percentage of the vehicle content. The label shall further recite the name and address of the manufacturer or distributor of the product. The analysis and composition may be inspected by the chief chemist of a laboratory designated by the department of business regulation.

History: En. Sec. 1, Ch. 69, L. 1959; Sec. 3-1510, R. C. M. 1947; amd. and redes. 90-701 by Sec. 80, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department of business regulation" at the end of the section for "department of agriculture"; and made minor changes in phraseology and punctuation.

90-702. Enforcement of chapter. The department of business regulation shall enforce this chapter. The department shall have access to all places of business, factories, stores, and buildings used for the manufacture or sale of paints or other products described in section 90-701. The department may purchase and open any package, can, jar, tub, or other receptacle containing any of the articles described in section 90-701 and found during an inspection.

History: En. Sec. 4, Ch. 69, L. 1959; Sec. 3-1513, R. C. M. 1947; amd. and redes. 90-702 by Sec. 83, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted references to "department of business regulation" for references to "department of agriculture and its appointed agents or assistants"; and made minor changes in phraseology and punctuation.

90-703. Designation of laboratory for analysis—report of analysis. The department of business regulation shall designate the laboratory where analysis of the products described in section 90-701 shall be made. When products are found to be in violation of this chapter, the chief chemist of the laboratory designated by the department shall report the facts to the department. A certificate signed by the chief chemist of the laboratory relating to the analysis of any of the products mentioned in section 90-701 is presumptive evidence of the facts stated in it.

History: En. Sec. 5, Ch. 69, L. 1959; Sec. 3-1514, R. C. M. 1947; amd. and redes. 90-703 by Sec. 84, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted references to "department of business regulation" for references to "department of agriculture"; and made minor changes in phraseology.

90-704. County attorney—duties regarding chapter. The county attorney of the county where the violation of this chapter occurred, shall prosecute every person, firm, or corporation violating this chapter when the evidence of the violation has been presented by the chief chemist of the laboratory making the analysis.

History: En. Sec. 6, Ch. 69, L. 1959; Sec. 3-1515, R. C. M. 1947; amd. and redes. 90-704 by Sec. 85, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology.

90-705. Possession as prima facie evidence. The possession, either constructive or actual, by a person, firm, or corporation dealing in the articles or substances described in section 90-701 and not properly labeled as provided by section 90-701, is prima facie evidence that those articles or substances are kept for sale in violation of this chapter.

History: En. Sec. 3, Ch. 69, L. 1959; Sec. 3-1512, R. C. M. 1947; amd. and redes. 90-705 by Sec. 82, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology and punctuation.

90-706. Penalty for violations. A person, firm, or corporation who violates this chapter shall be prosecuted and fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100) and all costs, including cost of analysis to the amount of twenty-five dollars ($25) or shall be imprisoned in the county jail for not more than sixty (60) days.

History: En. Sec. 2, Ch. 69, L. 1959; Sec. 3-1511, R. C. M. 1947; amd. and redes. 90-706 by Sec. 81, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology.

REVISED CODES OF MONTANA

VOLUME 6
Part 2
1977 Cumulative Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 6 (PART 2) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 6 (PART 2) THROUGH VOLUME 557, PACIFIC REPORTER (2ND SERIES)

Edited by

THE PUBLISHERS' EDITORIAL STAFF

THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202

Copyright © 1965, 1967, 1969, 1971, 1973, 1974, 1976 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

Copyright © 1977 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

NEW LAWS IN VOLUME 6 (Part 2)

For index see supplement to Replacement Volume 9

ENACTED IN 1965

Fiduciary sales, validation, 91-4324.

ENACTED IN 1967

Fiduciary sales, validation, 91-4325.

ENACTED IN 1969

Fiduciary sales, validation, 91-4326.
Waiver of inheritance tax of surviving spouse, 91-4414.1.
Workmen's compensation, advanced rate for dangerous place of employment, 92-1105.1.

ENACTED IN 1971

Fiduciary sales, validation, 91-4327.
Pneumoconiosis, total disability from, 92-1315.1.

ENACTED IN 1973

Fiduciary sales, validation, 91-4328.
Merit system for employees of workmen's compensation division, 92-121.
Workmen's compensation,
- Benefits payable, 92-701.1, 92-702.1, 92-703.1, 92-704.1, 92-706.1, 92-709.1.
  - Wages on which benefits based, 92-423.1, 92-423.2.
- Claim, denial by insurer, 92-615, 92-616.
- Covered employment, 92-204.1, 92-207.1, 92-410.1.
- Exempt employment, 92-202.1.
- Fees, fines and assessments, use for administrative costs, 92-116.1.
- Independent contractor defined, 92-438.1.
- Injuries compensable, 92-418.1.

ENACTED IN 1974

Probate of wills, expert handwriting analysis and report, 91-813 to 91-819.
Workmen's compensation, amount paid for various injuries, application of act, 92-704.2.

ENACTED IN 1975

Inheritance tax, joint tenancies, life estates, 91-4469.
Surviving spouse, transfer of joint tenancy property, 91-4321.1.
Workmen's compensation,
- Administrative duties, 92-845.
- Attorney's fees, 92-619.
- Disability benefits, indemnity benefits, election, 92-709.2.
- Judge's powers, 92-848, 92-850 to 92-852.
- Payments by insurer, 92-617, 92-618.
- Public records, right to inspect, 92-844, 92-846, 92-847.
- Unreasonable delay, increase in award, 92-849.

ENACTED IN 1977

Inheritance tax, property not requiring personal representative, 91-4470 to 91-4473.
Occupational Disease Act, 92-1303.1, 92-1312.1, 92-1314.1, 92-1315.2, 92-1334.1.
Workers' compensation,
- Subrogation right of insurer, 92-204.2.
- Uninsured employers' fund, 92-212 to 92-214.

Claims against estate,
Judge may present claim, 91-2706.
Payment of debt to stop interest, 91-2725.
Escheated estates, 91-502, 91-504 to 91-509, 91-512, 91-523.
Executors and administrators, liabilities and compensation of, 91-3406.
Inheritance taxes, 91-4405, 91-4409 to 91-4411, 91-4414 to 91-4419, 91-4421, 91-4423, 91-4425 to 91-4431, 91-4437 to 91-4440, 91-4442 to 91-4451, 91-4453 to 91-4455, 91-4459, 91-4468.
Mishandling of estate before grant of letters, 91-2301 to 91-2303.
Occupational Disease Act, 92-1302 to 92-1305, 92-1310, 92-1311, 92-1314, 92-1315, 92-1316 to 92-1321, 92-1323 to 92-1325, 92-1330, 92-1335, 92-1337, 92-1339, 92-1340, 92-1343, 92-1346, 92-1352, 92-1358.
Public administrators, 91-602, 91-608, 91-612, 91-614, 91-628, 91-629, 91-631.
State institutions, gifts to, 91-105, 91-106.
Trusts continuing after distribution, jurisdiction as to, 91-4201.
Will contests after probate proceedings, 91-1106.
Worker's compensation,
Administration of Act, 92-116.1 to 92-120.
Beneficiaries eligible, 92-413, 92-417, 92-502, 92-506 to 92-508, 92-608.
Benefits payable, 92-702.1, 92-703.1, 92-704.1, 92-705, 92-706.1, 92-707 to 92-709, 92-710, 92-715.
Covered employments, 92-202.1, 92-204.1, 92-206, 92-208, 92-411.
Definitions, 92-426, 92-429, 92-432.
Husband defined, 92-425.
Industrial accident board, 92-101, 92-111, 92-118.
Injuries compensable, 92-418, 92-439 to 92-441, 92-609, 92-614.
Insurance with private insurer, 92-1002, 92-1004 to 92-1010.
Insurance with workmen's compensation division, 92-205, 92-1101 to 92-1105.1, 92-1108, 92-1110, 92-1112 to 92-1115, 92-1117 to 92-1123.
Insurer defined, 92-435.
Insurer's denial of claim, notice, costs and attorneys' fees where claim compensable, 92-615, 92-616.
Miscellaneous regulations, powers and duties of division, 92-804, 92-806, 92-808, 92-814, 92-814.1, 92-818, 92-820, 92-826, 92-842.
Payment, 92-607, 92-614.
Rehabilitation of injured workers, 92-1401 to 92-1403, 92-1406.
Self-insurance plan, 92-901 to 92-908.
Time allowed for presentation of claim, 92-601.
Widower defined, 92-425.

MONTANA REVISED CODES

TITLE 91—WILLS, SUCCESSION, PROBATE AND GUARDIANSHIP

Chapter 1. Wills—execution and revocation, 91-105, 91-106.
5. Escheated estates—inheritance by nonresident aliens—disposal of unclaimed property, 91-502, 91-504 to 91-509, 91-512, 91-523.
6. Probate proceedings—public administrator, 91-602, 91-608, 91-612, 91-614, 91-628, 91-629, 91-631.
7. Probate proceedings—general jurisdiction of district court, Repealed—Section 2, Chapter 365, Laws of 1974.
8. Probate proceedings—probate of wills, 91-813 to 91-819.
10. Probate of foreign wills, Repealed—Section 2, Chapter 365, Laws of 1974.
11. Probate proceedings—contesting wills after probate, 91-1106.
13. Probate proceedings—executors and administrators—issuance of letters testamentary and of administration, Repealed—Section 2, Chapter 365, Laws of 1974; Section 15, Chapter 263, Laws of 1975.
15. Petition for letters of administration and action thereon, Repealed—Section 2, Chapter 365, Laws of 1974.
16. Proceedings for revocation of letters of administration, Repealed—Section 2, Chapter 365, Laws of 1974.
17. Oaths and bonds of executors and administrators, Repealed—Section 2, Chapter 365, Laws of 1974.
18. Special administrators and their powers and duties, Repealed—Section 2, Chapter 365, Laws of 1974.
19. Changes in administration on subsequent discovery of a will or death, incompetency or resignation of executors and administrators, Repealed—Section 2, Chapter 365, Laws of 1974.
20. Disqualification of judge and transfer of administration, Repealed—Section 2, Chapter 365, Laws of 1974.
23. Procedure to compel disclosure of property of estate—Liability for embezzlement, 91-2301 to 91-2303.
24. Provision for support of family, Repealed—Section 2, Chapter 365, Laws of 1974.
25. The homestead—procedure to set apart, Repealed—Section 2, Chapter 365, Laws of 1974.
26. Dower—procedure to assign, Repealed—Section 2, Chapter 365, Laws of 1974.
27. Claims against estate, 91-2706, 91-2725.
28. Sales of property of estate in general—borrowing money—sales of certain personal property, Repealed—Section 2, Chapter 365, Laws of 1974.
29. Summary sale of mines and mining interests, Repealed—Section 2, Chapter 365, Laws of 1974.
30. Sales of real estate and contracts for purchase of land, Repealed—Section 2, Chapter 365, Laws of 1974.
31. Mortgaging and leasing real estate, Repealed—Section 2, Chapter 365, Laws of 1974.
33. Conveyance of real estate by executors and administrators, Repealed—Section 2, Chapter 365, Laws of 1974.
34. Liabilities and compensation of executors and administrators, 91-3406.
35. Accounting and settlement by executors and administrators, Repealed—Section 1, Chapter 272, Laws of 1969; Section 15, Chapter 263, Laws of 1975.
36. Debts of the estate—payment of, Repealed—Section 2, Chapter 365, Laws of 1974; Section 15, Chapter 263, Laws of 1975.
37. Partial distribution prior to final settlement of estate, Repealed—Section 2, Chapter 365, Laws of 1974.

38. Determination of heirship and interest in estate, Repealed—Section 2, Chapter 365, Laws of 1974.
39. Final distribution of estate—discharge of executor or administrator, Repealed—Section 2, Chapter 365, Laws of 1974.
40. Partition of undivided estates after distribution, Repealed—Section 2, Chapter 365, Laws of 1974.
41. Appointment of agent for persons residing out of the state, Repealed—Section 2, Chapter 365, Laws of 1974.
42. Settlement of accounts of trustees after distribution of estate, 91-4201.
43. Probate proceedings, miscellaneous—citations—appeals, etc., 91-4324 to 91-4328.
44. Inheritance tax, 91-4405, 91-4409 to 91-4411, 91-4414 to 91-4419, 91-4421, 91-4423, 91-4425 to 91-4431, 91-4437 to 91-4440, 91-4442 to 91-4451, 91-4453 to 91-4455, 91-4459, 91-4468, 91-4470 to 91-4473.
46. Guardians of minors, Repealed—Section 2, Chapter 365, Laws of 1974; Section 15, Chapter 263, Laws of 1975.
47. Guardians of insane and incompetent persons, Repealed—Section 2, Chapter 365, Laws of 1974.
48. Guardianship of incompetent veterans, minors, and other beneficiaries of the veterans administration, Repealed—Section 2, Chapter 365, Laws of 1974.
50. Sale of property by guardians—investment of proceeds—Repealed—Section 2, Chapter 365, Laws of 1974; Section 15, Chapter 263, Laws of 1975.
51. Guardianship of nonresidents, Repealed—Section 2, Chapter 365, Laws of 1974.
53. Proceedings in lieu of probate—estates of less than ten thousand dollars, Repealed—Section 2, Chapter 365, Laws of 1974.

CHAPTER 1—WILLS—EXECUTION AND REVOCATION

Section 91-105. State institutions which may take by gift, bequest or grant.
91-106. Persons who may make gifts to state institution.

91-101, 91-102. (6974, 6975) Repealed.

Repeal

Sections 91-101, 91-102 (Ap. p. Sec. 4, p. 556, Cod. Stat. 1871; Ap. p. Sec. 1447, 5th Div. Comp. Stat. 1887), relating to the right of a person to make a will and the right of a married woman to make a will, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-103, 91-104. (6976, 6977) Repealed.

Repeal

Sections 91-103, 91-104 (Secs. 434, 437, p. 349, L. 1877; Sec. 1, Ch. 173, L. 1955), relating to wills or revocations procured by fraud, duress, menace, or undue influence; and relating to eligibility requirements for devisees or legatees, were repealed by Sec. 15, Ch. 263, Laws 1975.

91-105. (6978) **State institutions which may take by gift, bequest or grant.** The state of Montana, units of the university of Montana, the state school for the deaf and blind, all institutions in the department of institutions, and any and all institutions now created or established, or which may hereafter be created or established, and supported in whole or in part by the state of Montana for any purpose, are hereby empowered and given the right to accept, receive, take, hold, own, and possess gifts, donations, grants, devises, or bequests of real or personal property from any source whatsoever; and said gifts, donations, grants, bequests, or devises may be made direct to the state of Montana, or in the name of any of said institutions, or to any officer or board of said institutions, or to any person in trust for said institutions; but in the event the same shall be made direct to any such institution, or to any officer or board of any such

institution, such gift, donation, grant, devise, or bequest shall be construed as a gift, donation, grant, devise, or bequest to the state of Montana, and shall be administered and used by the state of Montana for the particular purpose for which the same was given, donated, granted, bequeathed, or devised; and in the event no particular purpose is mentioned in such gift, grant, devise, or bequest, then the same shall be used for the general support, maintenance or improvement of such institution by the state of Montana.

History: En. Sec. 1, Ch. 17, L. 1913; re-en. Sec. 6978, R. C. M. 1921; amd. Sec. 96, Ch. 199, L. 1965.

Amendment

The 1965 amendment inserted "units of" before "the university of Montana"; deleted "the state normal college, the state orphans' home" after "university of Montana"; and substituted "all institutions in the department of institutions" for "the state school of mines, the state reform school, the soldiers' home, the Montana state tuberculosis sanitarium, the state asylum for the insane, the state penitentiary" after "school for the deaf and blind."

91-106. (6979) **Persons who may make gifts to state institution.** A donation, gift, grant, bequest, devise, or testamentary disposition of property, real or personal, may be made by any person over the age of eighteen years, of sound mind, to the state of Montana, a unit of the university of Montana, the state school for deaf and blind, an institution in the department of institutions, and any and all institutions now created or established, or which may hereafter be created or established and supported, in whole or in part, by the state of Montana for any purpose. And any person, corporation, or association of persons may make any gift, donation, or grant of property, real or personal, to the state of Montana, or to any of the institutions above-named or referred to; but in the event any gift, donation, grant, devise, or bequest shall be made to any such institution, or to any officer or board of any such institution, the same shall be construed as a gift, donation, grant, devise, or bequest to the state of Montana, and shall be administered and used for the state of Montana for the particular purpose for which the same was given, donated, granted, bequeathed, or devised; and in the event no particular purpose is mentioned in such gift, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of such institution by the state of Montana.

History: En. Sec. 2, Ch. 17, L. 1913; re-en. Sec. 6979, R. C. M. 1921; amd. Sec. 97, Ch. 199, L. 1965.

Amendment

The 1965 amendment inserted "a unit of" before the university of Montana; deleted "the state normal college, the state orphans' home" after "university of Montana"; and substituted "an institution in the department of institutions" for "the state school of mines, the state reform school, the soldiers' home, the state asylum for the insane, the state penitentiary" after "school for deaf and blind."

91-107, 91-108. (6980, 6981) **Repealed.**

Repeal

Sections 91-107, 91-108 (Secs. 438, 439, p. 349, L. 1877), relating to the requirements for valid execution of a will and defining a holographic will, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-109. (6982) **Repealed.**

Repeal

Section 91-109 (Sec. 440, p. 349, L. 1877), relating to address and signature requirements of witnesses to a will, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-113 to 91-116. (6986 to 6989) **Repealed.**

Repeal

Sections 91-113 to 91-116 (Secs. 7, 8, p. 556, Cod. Stat. 1871; Secs. 444 to 447, pp. 350, 351, L. 1877), voiding gifts to subscribing witnesses, and allowing beneficiary witness who was also heir-at-law to receive a portion of his inheritance, and validating wills properly executed in states other than Montana, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-117 to 91-121. (6990 to 6994) **Repealed.**

Repeal

Sections 91-117 to 91-121 (Secs. 448 to 452, pp. 351, 352, L. 1877), relating to republication of a will by reference in a codicil; and relating to the execution requirements, proof, and probate of a nuncupative will, were repealed by Sec. 15, Ch. 263, Laws 1975.

91-122. (6995) **Repealed.**

Repeal

Section 91-122 (Sec. 453, p. 352, L. 1877), relating to the requirements for revoking a written will, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-123. (6996) **Repealed.**

Repeal

Section 91-123 (Sec. 454, p. 352, L. 1877), relating to evidence of revocation of a will, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-125 to 91-130. (6998 to 7003) **Repealed.**

Repeal

Sections 91-125 to 91-130 (Secs. 456 to 461, pp. 352, 353, L. 1877), relating to the revocation of a will by a subsequent will or by marriage and birth of issue, and the nonrevival of a former will by the destruction of a subsequent will or by the death of a spouse, and the effect of a contract for sale of devised property, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-131, 91-132. (7004, 7005) **Repealed.**

Repeal

Sections 91-131, 91-132 (Secs. 462, 463, p. 354, L. 1877; Sec. 15, Ch. 365, L. 1974), relating to mortgage or partial conveyance of devised property, were repealed by Sec. 15, Ch. 263, Laws 1975.

91-134. (7007) **Repealed.**

Repeal

Section 91-134 (Sec. 465, p. 354, L. 1877), relating to the revocation of a codicil, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-135 to 91-139. (7008 to 7012) **Repealed.**

Repeal

Sections 91-135 to 91-139 (Ap. p. Secs. 22 to 25, p. 558, Cod. Stat. 1871; Secs. 466 to 470, pp. 354, 355, L. 1877; Sec. 1, Ch. 58, L. 1947), relating to the rightful inheritance of after-born children, or children omitted from a will; the means of a payment of such inheritance, with allowance for advancements; and provision for vesting of bequests in the lineal descendants of a deceased heir, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-141. (7014) Repealed.

Repeal

Section 91-141 (Ap. p. Sec. 3, p. 556, Cod. Stat. 1871; Sec. 472, p. 355, L. 1877), relating to testator's subsequently acquired interest in real estate, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-142. (7015) Restriction to devise for charitable purposes.

Objections to Probate of Will

Trial court properly granted motion in limine to preclude opponent to probating of will from eliciting testimony respecting the claimed invalidity of the bequest to a cemetery district since such issues as charitable bequests and their validity in conforming with this section may only be determined in appropriate proceedings after the will is formally admitted to probate. Wallin v. Kinyon Estate, — M —, 519 P 2d 1236.

CHAPTER 2—WILLS—INTERPRETATION

91-201. (7016) Repealed.

Repeal

Section 91-201 (Sec. 474, p. 356, L. 1877), relating to the construction and execution of a will according to the intention of the testator, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-202. (7017) Repealed.

Repeal

Section 91-202 (Sec. 475, p. 356, L. 1877), relating to the ascertainment of the testator's intention from the words of the will, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-205. (7020) Harmonizing various parts.

Intention of Testator

Holographic will making specific bequests to various persons' children and directing that any residue be divided by percentage "to all of them more or less" was construed to bequeath specific sums to children as classes rather than individually but with children to participate equally as individuals in residue. In re Estate of Jensen, 152 M 495, 452 P 2d 418.

Where sole purpose and object of trust was payment of income for life to testator's wife, mother, sister and son, and such obligations were either fulfilled or no longer possible of fulfillment, trial court properly terminated trust. Testamentary Trust of Child, 153 M 349, 457 P 2d 447.

91-209. (7024) Words to receive an operative construction.

Ambiguous Phrase

Holographic will making specific bequests to various persons' children and directing that any residue be divided by percentage "to all of them more or less" was construed to bequeath specific sums to children as classes rather than individually but with children to participate equally as individuals in residue. In re Estate of Jensen, 152 M 495, 452 P 2d 418.

References

In re Jones' Estate, 146 M 439, 408 P 2d 482.

91-210. (7025) Repealed.

Repeal

Section 91-210 (Sec. 483, p. 357, L. 1877), relating to the avoidance of intestacy in the interpretation of a will, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-214 to 91-217. (7029 to 7032) **Repealed.**

Repeal

Sections 91-214 to 91-217 (Secs. 487 to 490, pp. 357, 358, L. 1877), relating to the effect of a general devise or bequest of property, or of the residue of the testator's property, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-218. (7033) **Repealed.**

Repeal

Section 91-218 (Sec. 491, p. 358, L. 1877; Sec. 18, Ch. 365, L. 1974), relating to testamentary disposition to a class of legatees, was repealed by Sec. 10, Ch. 516, Laws 1975.

91-225. (7040) **Repealed.**

Repeal

Section 91-225 (Sec. 498, p. 359, L. 1877), relating to the time of vesting of a devise or bequest, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-227. (7042) **Repealed.**

Repeal

Section 91-227 (Sec. 500, p. 359, L. 1877), relating to testamentary disposition to deceased legatee, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-235. (7050) **Repealed.**

Repeal

Section 91-235 (Sec. 508, p. 360, L. 1877), relating to advancements and ademptions, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 3—WILLS—GENERAL PROVISIONS

91-301. (7051) **Repealed.**

Repeal

Section 91-301 (Sec. 1820, Civ. C. 1895), designating and defining the five types of legacies, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-302. (7052) **Repealed.**

Repeal

Section 91-302 (Sec. 1821, Civ. C. 1895), relating to the liability of the estate of an intestate person for the debts of the estate, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-303, 91-304. (7053, 7054) **Repealed.**

Repeal

Sections 91-303, 91-304 (Secs. 1822, 1823, Civ. C. 1895), relating to the order in which the property of the testator shall be used for payment of debts or for payment of legacies, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-305, 91-306. (7055, 7056) **Repealed.**

Repeal

Sections 91-305, 91-306 (Secs. 1824, 1825, Civ. C. 1895), relating to payment of legacies and abatement of legacies, were repealed by Sec. 15, Ch. 263, Laws 1975.

91-307, 91-308. (7057, 7058) **Repealed.**

Repeal

Sections 91-307, 91-308 (Secs. 1826, 1827, Civ. C. 1895), relating to possession and sale of property specifically be-

queathed or devised, and relating to the rights of a bona fide purchaser or encumbrancer of real property conveyed by an heir, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-310. (7060) Repealed.

Repeal

Section 91-310 (Sec. 1829, Civ. C. 1895), relating to the accrual of income from a bequest, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-311 to 91-314. (7061 to 7064) Repealed.

Repeal

Sections 91-311 to 91-314 (Secs. 1830 to 1833, Civ. C. 1895), relating to the satisfaction of a legacy made in causa mortis, to the time of payment and the interest due for legacies and annuities, and to the construction of a legacy according to the testator's intent, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-315, 91-316. (7065, 7066) Repealed.

Repeal

Sections 91-315, 91-316 (Secs. 1834, 1835, Civ. C. 1895), relating to the appointment of an executor according to the tenor of the will, and voiding any authority given an executor to appoint another executor, were repealed by Sec. 15, Ch. 263, Laws 1975.

91-317. (7067) Repealed.

Repeal

Section 91-317 (Sec. 1836, Civ. C. 1895), relating to the powers of an executor prior to issuance of his letters, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-319. (7069) Repealed.

Repeal

Section 91-319 (Sec. 1838, Civ. C. 1895), relating to conflict of laws as to the validity and interpretation of wills in regard to real property or to personal property, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-320. (7070) Repealed.

Repeal

Section 91-320 (Sec. 1839, Civ. C. 1895), relating to the liability of the beneficiaries for the testator's obligations, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-321. Repealed.

Repeal

Section 91-321 (Sec. 1, Ch. 185, L. 1959), relating to devise or bequest to trustee of inter vivos trust established by testator, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 4—SUCCESSION

91-401. (7071) Repealed.

Repeal

Section 91-401 (Sec. 531, p. 363, L. 1877), defining the word "succession," was repealed by Sec. 15, Ch. 263, Laws 1975.

91-402 to 91-405. (7072 to 7075) Repealed.

Repeal

Sections 91-402 to 91-405 (Ap. p. Sec. 252, p. 361, Cod. Stat. 1871; Secs. 532, 534, 535, pp. 363, 364, 366; Sec. 1, p. 48, L. 1879; Secs. 1853, 1854, Civ. C. 1895; Sec. 1, Ch. 140, L. 1941; Sec. 1, Ch. 60, L.

1947; Sec. 1, Ch. 217, L. 1971), relating to intestate succession and the succession rights of an illegitimate child and the mother of an illegitimate child, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-411 to 91-418. (7081 to 7088) **Repealed.**

Repeal

Sections 91-411 to 91-418 (Secs. 1860 to 1867, Civ. C. 1895; Sec. 1, Ch. 44, L. 1947), relating to succession rights of relatives of half blood, and relating to advancements, inheritance by representation, and inheritance by aliens, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-422. (7092) **Repealed.**

Repeal

Section 91-422 (Sec. 1871, Civ. C. 1895), relating to the liability of an heir for the obligations of the decedent, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-423 to 91-430. Repealed.

Repeal

Sections 91-423 to 91-430 (Secs. 1 to 8, Ch. 20, L. 1951), comprising the Uniform Simultaneous Death Act, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 5—ESCHEATED ESTATES—INHERITANCE BY NONRESIDENT ALIENS—DISPOSAL OF UNCLAIMED PROPERTY

Section 91-502. Title to escheated property vests in state—when.
91-504. Investment and disposition of money and property.
91-505. Unsold personal property, how disposed of—auction sale.
91-506. Unsold real property, how disposed of—auction sale.
91-507. Unclaimed personal property in hands of agent—disposal.
91-508. Sales by state department of revenue, how conducted.
91-509. Court action by claimant of property in hands of state treasurer—limitation of action—judgment.
91-512. Duty of attorney general—employment of special assistant.
91-523. Disposition of money.

91-502. Title to escheated property vests in state—when. Whenever the title to any property, either real or personal, or mixed, fails for any reason including want of heirs or next of kin, such title shall vest in the state of Montana immediately upon the death of the owner without an inquest or other proceeding in the nature of office found, and there shall be no presumption that such owner died leaving heirs or next of kin; provided that in relation to property other than estates, title shall be presumed to have failed whenever the owner, beneficial owner, or person entitled to any such property within this state has been or shall be and remain unknown for a period of twenty (20) successive years, and during such period whenever the whereabouts of such owner, beneficial owner or persons has been or shall be and remain unknown, and during such period whenever any personal property wherever situated has been or shall be and remain unclaimed, then, in such event, such personal property shall escheat to the state.

All sums escheated under the provisions of the Escheated Property Act shall be delivered by the state department of revenue to the state treasurer and deposited by the treasurer in the agency fund; in connection

with the recovery of money or property from escheats other than those from estates, the state department of revenue is hereby authorized and directed to deduct the costs incurred in reducing such moneys or property to the possession of the state of Montana, which sum shall not exceed five per centum (5%) of the amount so recovered, except for such other costs and fees as the judgment of escheat shall so direct.

Moneys and properties placed in the agency fund shall be held in trust for a period of ten (10) years prior to deposit in the public school subfund in the trust and legacy fund by the state treasurer; such ten (10) year period being a time within which the owner, beneficial owner, or any person having a right, title, or interest in the property or money escheated may make claim by the institution of an action for the dissolution of the trust in an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the state.

In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it shall be lawful for the attorney general or his assistant to obtain discovery on motion in the district court requiring any such person or persons to divulge any information they may have concerning the possession or location of any property subject to escheat, or any other information pertinent to the recovery of such property by the state of Montana or which information may lead to the discovery of such escheatable property.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973.

Amendments

The 1971 amendment inserted "delivered by the state board of equalization to the state treasurer and" in the first part of the second paragraph; and substituted "the state board of equalization" for "the state treasurer" in the latter part of the second paragraph.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places in the second paragraph.

91-504. Investment and disposition of money and property. The moneys thus deposited may, upon order of the court or judge, be invested, pending the proceedings, in securities of the United States, or of this state, when such investment is for the best interests of the estate. At the final settlement of any estate, if there be no heirs or other claimants thereof, the district judge shall make an order directing the public administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer, who shall keep an account with such estate of all moneys received and paid to him, and the county treasurer shall forthwith remit all of said money to the state department of revenue with a statement as to the estates to which the money belongs. The department shall immediately deliver such money to the state treasurer who shall thereupon deposit such money so received by him in the agency fund of the state of Montana.

History: En. Sec. 4, Ch. 184, L. 1943; amd. Sec. 111, Ch. 147, L. 1963; amd. Sec. 2, Ch. 156, L. 1971; amd. Sec. 68, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "the state board of equalization" for "the state treasurer" near the end of the second sen-

tence; and substituted "The board shall immediately deliver such money to the state treasurer who shall" for "And the state treasurer shall" at the beginning of the third sentence.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" in the second and third sentences.

91-505. Unsold personal property, how disposed of—auction sale. If the personal property in an estate was not sold by the executor or administrator at the final settlement of the estates as by law provided, then it shall be the duty of such executor or administrator to turn over all of such property to the county treasurer, who in turn shall deliver it to the state department of revenue with a statement setting forth the name of the estate to which it belongs, and the state department of revenue must within one (1) year of the receipt of such property cause the same to be sold to the highest bidder at a public auction sale, at the department's office in Helena, Montana. The state department of revenue shall give notice of such sale by publication in a newspaper published in the city of Helena, Montana, once a week for two (2) successive weeks, making in all two (2) publications, the last publication to be at least twenty (20) days prior to the date of such sale. Such notice shall give the time and place of such sale and shall contain a list and description of the stocks, bonds, securities, effects, or other personal property to be sold. All of the expenses of such sale shall be deducted from the proceeds thereof by the state department of revenue and the balance of such proceeds shall be delivered by the department to the state treasurer for deposit in the agency fund of the state of Montana.

History: En. Sec. 5, Ch. 184, L. 1943; amd. Sec. 112, Ch. 147, L. 1963; amd. Sec. 3, Ch. 156, L. 1971; amd. Sec. 69, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted references to the state board of equalization for references to the state treasurer in five places; and substituted "shall be delivered by the board to the state treasurer for deposit" for "shall be deposited by the state treasurer" near the end of the section.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

91-506. Unsold real property, how disposed of—auction sale. If the real property was not sold by the executor or administrator or public administrator at the final settlement of the estate as by law provided, then it shall be the duty of the executor or administrator or public administrator to make and execute to the state of Montana an executor's or administrator's deed and to deliver the same to the county clerk and recorder of the county wherein such real property is situated, and it shall then become the duty of the county clerk and recorder to file and record said deed, without charge, and after being so recorded the county clerk and recorder shall mail the said deed to the state department of revenue which shall make a record thereof and deliver the deed to the state board of land commissioners. Within one (1) year after the receipt of such recorded deed the state board of land commissioners shall cause such property to be sold to the highest bidder at public auction sale, to be held at the courthouse in the county where such real property or any part thereof is situated. The state board of land commissioners shall give notice

of such sale by publication in a newspaper published in the county wherein such real estate or any part thereof is situated once a week for two (2) weeks, making in all two (2) publications, the last publication to be at least twenty (20) days prior to the date of such sale. Such notice shall give the time and place of such sale and contain a description of the real property to be sold. All expenses of such sale shall be deducted by the state board of land commissioners from the proceeds thereof and the balance of such proceeds shall be turned over to the state treasurer who shall deposit the same in the agency fund of the state of Montana. The board of land commissioners shall provide the state department of revenue with a statement indicating the sale price, expenses and net proceeds resulting from each such sale.

History: En. Sec. 6, Ch. 184, L. 1943; amd. Sec. 113, Ch. 147, L. 1963; amd. Sec. 4, Ch. 156, L. 1971; amd. Sec. 70, Ch. 391, L. 1973.

Amendments

The 1971 amendment inserted "to the state board of equalization which shall make a record thereof and deliver the deed" near the end of the first sentence; and added the final sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

91-507. Unclaimed personal property in hands of agent—disposal. Whenever the personal property in an estate remains in the hands of an agent, unclaimed for two (2) years and it appears to the court or judge that it is for the best interests of the estate and those interested therein, such property shall be sold under the order of the court or judge and the proceeds, after deducting the expense of the sale allowed by the court or judge, must be paid to the state department of revenue for deposit into the state treasury, and upon receipt of such proceeds it shall be the duty of the state treasurer to deposit the same in the agency fund of the state of Montana.

History: En. Sec. 7, Ch. 184, L. 1943; amd. Sec. 114, Ch. 147, L. 1963; amd. Sec. 5, Ch. 156, L. 1971; amd. Sec. 71, ch. 391, L. 1973.

Amendments

The 1971 amendment inserted "to the state board of equalization for deposit" after "must be paid" in the latter part of the section.

The 1973 amendment substituted "department of revenue" for "board of equalization."

91-508. Sales by state department of revenue, how conducted. All hereinbefore mentioned sales by the state department of revenue must be at public auction at the department's office. Said sales must be for cash and shall be made to the highest bidder, provided, however, that the department may reject all bids which are disproportionate to the value of the property being sold.

History: En. Sec. 8, Ch. 184, L. 1943; amd. Sec. 6, Ch. 156, L. 1971; amd. Sec. 72, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted references to the state board of equalization for references to the state treasurer in three places; and deleted "in the state capitol" from the end of the first sentence.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

91-509. Court action by claimant of property in hands of state treasurer —limitation of action—judgment. Any persons claiming property in the

hands of the state treasurer must bring an action in the district court of Lewis and Clark county, Montana, against the state treasurer. In such action one copy of the complaint and summons must be served upon the state treasurer, one must be served upon the attorney general and one must be served upon the director of revenue.

Such action shall be prosecuted subject to all of the provisions of the statutes of this state in relation to civil actions generally, including the right of either party to appeal to the supreme court of the state of Montana. Such action must be brought within two (2) years from the date on which the money or property is received by the state treasurer, saving, however, to infants and persons of unsound mind, or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or two (2) years after their respective disabilities cease.

The judgment of the court in such action shall determine and fix the amount of inheritance tax, if any, which is due from said claimant to the state of Montana upon the money or property claimed and none of said money or property shall be turned over to said claimant until said inheritance tax is paid. The state department of revenue shall issue its interlocutory certificate showing the amount of said inheritance tax due, if any, and shall have the right to file objections and be heard upon the final determination of said tax.

History: En. Sec. 9, Ch. 184, L. 1943; amd. Sec. 1, Ch. 79, L. 1945; amd. Sec. 73, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "director of revenue" for "state board of equalization" at the end of the first paragraph; and substituted "department of revenue" for "board of equalization" in the second sentence of the third paragraph.

Applicability to Foreign Nationals

Under a treaty between the United States and Yugoslavia which provided that Yugoslav claimants had the same right to inherit from their relatives residing in the United States as they would if they were American citizens living in the same state, the statute of limitations applicable to Yugoslav claimants of their Montana uncle's escheated estate was the same one which would apply if the claimants were Montana residents; therefore, the tolling provision of this section applicable to citizens of the United States outside its boundaries was not pertinent to the case. Levc v. Connors, — M —, 555 P 2d 751.

91-512. Duty of attorney general—employment of special assistant. The attorney general of the state of Montana shall be the legal adviser in connection with all escheated property matters and it shall be the duty of the attorney general to make investigations and conduct inquiries to determine whether there is property in the state of Montana which should escheat to the state of Montana, and to take all steps necessary to secure such escheat, and for this purpose the attorney general is authorized and empowered to employ a special assistant and incur necessary expenses subject to appropriation limitations.

History: En. Sec. 12, Ch. 184, L. 1943; amd. Sec. 1, Ch. 193, L. 1953; amd. Sec. 115, Ch. 147, L. 1963; amd. Sec. 1, Ch. 377, L. 1971.

Amendments

The 1971 amendment substituted "and incur necessary expenses subject to appropriation limitations" at the end of the section for "at a salary not to exceed six thousand dollars ($6,000.00) per annum together with actual, necessary expenses while engaged in outside work in connection with the duties of his office as defined by law."

91-520 to 91-522. Repealed.

Repeal

Sections 91-520 to 91-522 (Secs. 2, 3, 6, Ch. 104, L. 1939; Sec. 1, Ch. 30, L. 1951; Sec. 1, Ch. 31, L. 1951; Sec. 1, Ch. 144, L. 1953; Sec. 55, Ch. 100, L. 1973), relating to the inheritance rights of aliens residing in a foreign country, and to the duties of an administrator in regard to such alien heirs, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-523. Disposition of money. All money, including that realized from the sale or sales of property delivered to the county by an executor or administrator, under the provisions of this act shall, immediately upon its receipt by the county treasurer be delivered to the state department of revenue which shall immediately deliver same to the state treasurer and by him deposited in the agency fund of the state of Montana.

History: En. Sec. 4, Ch. 104, L. 1939; amd. Sec. 1, Ch. 18, L. 1947; amd. Sec. 116, Ch. 147, L. 1963; amd. Sec. 7, Ch. 156, L. 1971; amd. Sec. 74, Ch. 391, L. 1973.

Amendments

The 1971 amendment inserted "to the state board of equalization which shall immediately deliver same" before "to the state treasurer" in the latter part of the section.

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 6—PROBATE PROCEEDINGS—PUBLIC ADMINISTRATOR

Section 91-602. Must procure letters of administration—bond and oath.
91-608. Order to examine party charged with misappropriating estate.
91-612. Moneys of estates in hands of public administrator, deposit and payment of—escheated estates fund.
91-614. When to settle with clerk of district court.
91-628. Compensation of public administrator.
91-629. Retiring public administrator may close pending estates.
91-631. Adjustment of compensation.

91-602. (9991) **Must procure letters of administration—bond and oath.** Whenever a public administrator takes charge of an estate, under order of the court, he must, with all convenient dispatch, procure letters of administration thereon, in like manner and on like proceedings as letters of administration are issued to other persons. His official bond and oath are in lieu of a personal representative's bond and oath, but when real estate is ordered to be sold, another bond may be required by the court.

History: En. Sec. 334, p. 326, L. 1877; re-en. Sec. 334, 2nd Div. Rev. Stat. 1879; re-en. Sec. 334, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4511, Pol. C. 1895; re-en. Sec. 3074, Rev. C. 1907; re-en. Sec. 9991, R. C. M. 1921; amd. Sec. 4, Ch. 263, L. 1975. Cal. C. Civ. Proc. Sec. 1727.

Amendments

The 1975 amendment substituted "a personal representative's bond" for "the administrator's bond" in the second sentence; and substituted "may be required" for "must be required" in the second sentence.

91-608. (9997) **Order to examine party charged with misappropriating estate.** When the public administrator complains to the district court or a judge thereof, on oath, that any person has concealed, committed theft of, or disposed of or has in his possession any money, goods, property, or effects to the possession of which such administrator is entitled in his official capacity, the court or judge may cite such person to appear and may examine him on oath touching the matter of such complaint.

History: En. Sec. 340, p. 328, L. 1877; re-en. Sec. 340, 2nd Div. Rev. Stat. 1879; re-en. Sec. 340, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4517, Pol. C. 1895; re-en. Sec. 3080, Rev. C. 1907; re-en. Sec. 9997, R. C. M. 1921; amd. Sec. 65, Ch. 359, L. 1977. Cal. C. Civ. Proc. Sec. 1733.

Amendments

The 1977 amendment substituted "committed theft of" for "embezzled"; and made minor changes in punctuation.

91-612. (10001) **Moneys of estates in hands of public administrator, deposit and payment of—escheated estates fund.** It is the duty of every public administrator, as soon as he receives the same, to deposit with the county treasurer of the county in which probate proceedings are pending, all moneys of the estate, and such moneys may be drawn upon the order of the personal representative, countersigned by a district judge, when required for the purposes of administration. It is the duty of the county treasurer to receive and safely keep all such moneys, and pay them out upon the order of the personal representative, when countersigned by a district judge, and not otherwise, and to keep an account with such estate of all moneys received and paid to him; and for the safekeeping and payment of all such moneys, as herein provided, the said treasurer and his sureties are liable upon his official bond. The moneys thus deposited may, upon order of the court or judge, be invested, pending the proceedings, in securities of the United States, or of this state, when such investment is for the best interests of the estate. At the final settlement of any estate, if there be no heirs or other claimants thereof, the district judge shall make an order directing the administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer, who shall credit the same and all other moneys belonging to said estate to the escheated estates fund, and the county treasurer shall forthwith remit all of said money to the department of revenue with a statement as to the estates to which the money belongs, which remittance shall be treated as provided in chapter 5, Title 91, R. C. M. 1947, as amended.

History: En. Sec. 344, p. 329, L. 1877; re-en. Sec. 344, 2nd Div. Rev. Stat. 1879; re-en. Sec. 344, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4521, Pol. C. 1895; re-en. Sec. 3084, Rev. C. 1907; re-en. Sec. 10001, R. C. M. 1921; amd. Sec. 1, Ch. 119, L. 1929; amd. Sec. 1, Ch. 76, L. 1931; amd. Sec. 14, Ch. 365, L. 1974. Cal. C. Civ. Proc. Sec. 1737.

Amendments

The 1974 amendment substituted references to "personal representative" for "executor or administrator" in the first and second sentences; substituted "department of revenue" for "state treasurer" in the last sentence; and added "which remittance shall be treated as provided in chapter 5, Title 91, R. C. M. 1947, as amended" at the end of the last sentence.

91-612A, 91-612B. Repealed.

Repeal

Sections 91-612A, 91-612B (Secs. 2, 3, Ch. 76, L. 1931), relating to remittance of unclaimed moneys of estates to the state treasurer, and subsequent transfer to the common school permanent fund, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-614. (10003) **When to settle with clerk of district court.** The public administrator is required to account and to settle and adjust his accounts, relating to the care and disbursement of money or property belonging to estates in his hands, with the clerk of the district court, on

the first Monday of each month, and he must pay to the county treasurer any money remaining in his hands of an estate unclaimed.

History: En. Sec. 346, p. 329, L. 1877; re-en. Sec. 346, 2nd Div. Rev. Stat. 1879; re-en. Sec. 346, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4523, Pol. C. 1895; re-en. Sec. 3086, Rev. C. 1907; re-en. Sec. 10003, R. C. M. 1921; amd. Sec. 5, Ch. 263, L. 1975. Cal. C. Civ. Proc. Sec. 1739.

Amendments

The 1975 amendment deleted "under oath" after "is required to account" in the first sentence; and deleted "as provided in sections 91-4103 to 91-4106" at the end of the section.

91-623 to 91-627. (10012 to 10016) **Repealed.**

Repeal

Sections 91-623 to 91-627 (Secs. 3 to 7, Ch. 134, L. 1909; Sec. 1, Ch. 36, L. 1929; Sec. 1, Ch. 222, L. 1969), relating to settlement by the public administrator of estates of less than fifteen hundred dollars, were repealed by Sec. 15, Ch. 263, Laws 1975.

91-628. (10017) **Compensation of public administrator.** The public administrator shall receive as full compensation for his services, including attorney's fees, the amounts provided for in sections 91A-3-719 and 91A-3-720; provided, that in no case shall the compensation be less than twenty-five dollars ($25).

History: En. Sec. 8, Ch. 134, L. 1909; re-en. Sec. 10017, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1969; amd. Sec. 6, Ch. 263, L. 1975.

Amendments

The 1969 amendment raised the administrator's minimum compensation from "five dollars" to "twenty-five dollars."

The 1975 amendment substituted "the amounts provided for in sections 91A-3-719 and 91A-3-720" for "a commission of fifteen per cent (15%) of the total amount of money received by him in any estate provided for in this act."

91-629. Retiring public administrator may close pending estates. The public administrator, upon the expiration or termination of his term of office, may continue to administer estates not closed by filing and presenting to the court, a full and complete account pertaining to each estate not closed, securing an order of court granting him letters of administration and qualifying himself as a personal representative.

History: En. Sec. 1, Ch. 4, L. 1941; amd. Sec. 7, Ch. 263, L. 1975.

Amendments

The 1975 amendment substituted "letters of administration" and "personal representative" for "letters of general administration" and "general administrator"; and deleted "under and pursuant to sections 91-1701 and 91-1702, and executing and filing a new bond in such sum or sums as may be fixed by the court" at the end of the section.

91-631. Adjustment of compensation. Thereupon the court shall determine and allow such predecessor in office, for his services rendered in connection with estates not closed, a compensation based upon the commission prescribed and allowed by law, in proportion to the services necessarily rendered and those necessary to be rendered by such successor in closing up such estates. Such successor shall thereupon be allowed and paid the balance of such commission allowed.

History: En. Sec. 3, Ch. 4, L. 1941; amd. Sec. 8, Ch. 263, L. 1975.

Amendments

The 1975 amendment deleted "now"

after "compensation based upon the commission" in the middle of the section; and deleted "by said section" at the end of the section.

CHAPTER 7—PROBATE PROCEEDINGS—GENERAL JURISDICTION OF DISTRICT COURT

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-701, 91-702. (10018, 10019) Repealed.

Repeal

Sections 91-701, 91-702 (Secs. 6, 7, p. 241, L. 1877), relating to the jurisdiction of the court and the proper county of probate, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 8—PROBATE PROCEEDINGS—PROBATE OF WILLS

Section 91-813. Petition by party requesting handwriting analysis.
91-814. Court to determine necessity of procedure, qualifications of expert.
91-815. Clerk to mail will—notice.
91-816. Expert to return will to clerk.
91-817. Disposition of written report.
91-818. Petitioner to pay all fees.
91-819. Report property of petitioner unless interested party shares fees.

91-801 to 91-811. (10020 to 10030) Repealed.

Repeal

Sections 91-801 to 91-811 (Secs. 8 to 18, pp. 242 to 244, L. 1877; Sec. 1, Ch. 94, L. 1925; Sec. 1, Ch. 86, L. 1935; Sec. 1, Ch. 71, L. 1949), relating to delivery of will to district court; petition to probate will, authority of the judge, order for production of will, and proof requirements for admission to probate; forfeiture of right to letters testamentary; notice of probate hearing, with notice to heirs, and proof of notice; and rights of heirs to appear and contest will, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-812. (10031) Repealed.

Repeal

Section 91-812 (Sec. 19, p. 244, L. 1877), relating to probate of holographic wills, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-813. Petition by party requesting handwriting analysis. In any proceeding involving the probate, either contested or uncontested, of a will, in which the signature of the testator or of any witness is an issue, any party to the proceeding may file with the court a verified petition requesting that the original will be delivered to a handwriting expert residing and having his place of business outside the state or outside the county, for an examination of any of the signatures on the will.

History: En. Sec. 1, Ch. 13, L. 1974.

Title of Act

An act providing a procedure permitting a handwriting expert residing and having his place of business outside the county or state to examine the signatures on the original copy of a will.

91-814. Court to determine necessity of procedure, qualifications of expert. The court, upon notice and hearing, shall determine whether the procedure is justified by the circumstances of the case and whether the handwriting expert specified in the petition is a qualified professional handwriting expert.

History: En. Sec. 2, Ch. 13, L. 1974.

91-815. Clerk to mail will—notice. If the court grants the petition for delivery of the original will to a qualified handwriting expert residing and having his place of business outside the county or state, the clerk of court shall make at least two (2) photocopies of the original will, which photocopies shall remain in the custody of the clerk of court. The clerk shall mail the original will by registered mail, return receipt requested, to the handwriting expert specified in the order and shall give notice of the mailing by mailing copies of the order to each of the parties to the proceeding and to the handwriting expert.

History: En. Sec. 3, Ch. 13, L. 1974.

91-816. Expert to return will to clerk. Upon completion of his analysis, the handwriting expert shall return the original will to the clerk of court by registered mail, return receipt requested.

History: En. Sec. 4, Ch. 13, L. 1974.

91-817. Disposition of written report. Unless the court orders another disposition of the written report, the handwriting expert, upon completion of his analysis, shall mail his written report to the party who requested it.

History: En. Sec. 5, Ch. 13, L. 1974.

91-818. Petitioner to pay all fees. All fees and expenses arising from the procedure outlined in this act, including the cost of photocopying the will, the expense of all registered mailings and the handwriting expert's fee, shall be paid by the party requesting the handwriting analysis.

History: En. Sec. 6, Ch. 13, L. 1974.

91-819. Report property of petitioner unless interested party shares fees. Unless the court otherwise orders, the handwriting expert's written report shall be the sole and exclusive property of the party requesting it; provided however, that upon demand and the payment of his prorata share of the fees and costs of the handwriting expert, as shall be determined by the court, any interested party may obtain a certified copy of the written report.

History: En. Sec. 7, Ch. 13, L. 1974.

CHAPTER 9—PROBATE PROCEEDINGS—CONTESTING PROBATE OF WILLS

91-901. (10032) Repealed.

Repeal

Section 91-901 (Sec. 20, p. 245, L. 1877; Sec. 1, Ch. 8, L. 1963), relating to the filing of grounds for opposition to probate of a will, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-904. (10035) Repealed.

Repeal

Section 91-904 (Sec. 23, p. 246, L. 1877), relating to attendance and testimony of subscribing witnesses and admission of evidence of testator's handwriting in an action to contest a will, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 10—PROBATE OF FOREIGN WILLS

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-1001 to 91-1003. (10039 to 10041) Repealed.

Repeal

Sections 91-1001 to 91-1003 (Secs. 27 to 29, pp. 246, 247, L. 1877; Sec. 1, Ch. 192, L. 1935; Sec. 1, Ch. 44, L. 1939; Sec. 1, Ch. 187, L. 1943; Sec. 1, Ch. 56, L. 1953), relating to probate proceedings and requirements for foreign wills, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 11—PROBATE PROCEEDINGS—CONTESTING WILLS AFTER PROBATE

Section 91-1106. Costs and expenses—by whom paid.

91-1101 to 91-1105. (10042 to 10046) Repealed.

Repeal

Sections 91-1101 to 91-1105 (Secs. 30 to 34, pp. 247, 248, L. 1877; Sec. 1, Ch. 19, L. 1963), relating to proceedings in probate contesting the validity of a will, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-1106. (10047) Costs and expenses—by whom paid.

When the validity or probate of a will is contested through court action the fees and expenses must be paid by the party contesting the validity or probate of the will, if the will in probate is confirmed. If the probate is revoked, the costs must be paid by the party who resisted the revocation, or out of the property of the decedent, as the court directs.

History: En. Sec. 35, p. 248, L. 1877; re-en. Sec. 35, 2nd Div. Rev. Stat. 1879; re-en. Sec. 35, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2365, C. Civ. Proc. 1895; re-en. Sec. 7412, Rev. C. 1907; re-en. Sec. 10047, R. C. M. 1921; amd. Sec. 16, Ch. 365, L. 1974. Cal. C. Civ. Proc. Sec. 1332.

Amendments

The 1974 amendment inserted "When the validity or probate of a will is contested through court action" at the beginning of the section.

91-1107. (10048) Repealed.

Repeal

Section 91-1107 (Sec. 36, p. 249, L. 1877; Sec. 2, Ch. 19, L. 1963), relating to the six-month limitation for contesting the validity of a will, and excepting persons under disability, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 12—PROBATE OF LOST OR DESTROYED WILLS AND OF NUNCUPATIVE WILLS

91-1201, 91-1202. (10049, 10050) Repealed.

Repeal

Sections 91-1201, 91-1202 (Secs. 37, 38, p. 249, L. 1877), relating to proof requirements for lost or destroyed wills, were repealed by Sec. 15, Ch. 263, Laws 1975.

91-1205 to 91-1207. (10053 to 10055) Repealed.

Repeal

Sections 91-1205 to 91-1207 (Secs. 41 to 43, pp. 249, 250, L. 1877), relating to proof requirements and proceedings for probate of nuncupative wills, were repealed by Sec. 15, Ch. 263, Laws 1975.

CHAPTER 13—PROBATE PROCEEDINGS—EXECUTORS AND ADMINISTRATORS—ISSUANCE OF LETTERS TESTAMENTARY AND OF ADMINISTRATION

(Repealed—Section 2, Chapter 365, Laws of 1974; Section 15, Chapter 263, Laws of 1975)

91-1301 to 91-1303. (10056 to 10058) Repealed.

Repeal

Sections 91-1301 to 91-1303 (Secs. 44 to 46, p. 250, L. 1877), relating to issuance of letters testamentary and objections thereto, and relating to the qualifying of executors, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-1304. (10059) Repealed.

Repeal

Section 91-1304 (Sec. 47, p. 251, L. 1877), relating to the effect of marriage upon the capacity of a woman to serve as an executor, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-1305 to 91-1312. (10060 to 10067) Repealed.

Repeal

Sections 91-1305 to 91-1312 (Secs. 48 to 54, 108, pp. 251, 252, 264, L. 1877), relating to death of the executor; appointment of a minor or absentee executor; authority of a co-executor, or administrator with will annexed; form for letters testamentary or letters of administration; and the evidentiary effect of the court minutes, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 14—PERSONS TO WHOM AND ORDER IN WHICH LETTERS OF ADMINISTRATION ARE GRANTED

91-1401, 91-1402. (10068, 10069) Repealed.

Repeal

Sections 91-1401, 91-1402 (Secs. 55, 56, p. 253, L. 1877; Sec. 1, Ch. 219, L. 1939; Sec. 1, Ch. 68, L. 1969), relating to the order of preference for appointment of persons entitled to administer an estate, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-1404 to 91-1406. (10071 to 10073) Repealed.

Repeal

Sections 91-1404 to 91-1406 (Secs. 58, 59, p. 254, L. 1877; Ap. p. 60, 2nd Div. Comp. Stat. 1887; Sec. 1, p. 137, L. 1899; Sec. 1, Ch. 59, L. 1969), relating to qualifications of administrators, and the appointment of minors and married women, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 15—PETITION FOR LETTERS OF ADMINISTRATION AND ACTION THEREON

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-1501 to 91-1509. (10074 to 10082) Repealed.

Repeal

Sections 91-1501 to 91-1509 (Secs. 61 to 69, pp. 254 to 256, L. 1877), relating to petition and proceedings for letters of administration, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 16—PROCEEDINGS FOR REVOCATION OF LETTERS OF ADMINISTRATION

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-1601 to 91-1604. (10083 to 10086) Repealed.

Repeal

Sections 91-1601 to 91-1604 (Secs. 70 to 73, p. 256, L. 1877), relating to proceedings for revocation of letters of administration, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 17—OATHS AND BONDS OF EXECUTORS AND ADMINISTRATORS

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-1701 to 91-1723. (10087 to 10106) Repealed.

Repeal

Sections 91-1701 to 91-1723 (Secs. 74 to 92, pp. 256 to 260, L. 1877; Sec. 1, Ch. 78, L. 1903; Sec. 1, Ch. 173, L. 1919; Secs. 1, 2, Ch. 150, L. 1937; Sec. 1, Ch. 167, L. 1937; Secs. 1 to 3, Ch. 179, L. 1937; Sec. 1, Ch. 184, L. 1955; Sec. 1, Ch. 119, L. 1963; Sec. 17, Ch. 423, L. 1971), relating to oaths and bonds of executors and administrators, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 18—SPECIAL ADMINISTRATORS AND THEIR POWERS AND DUTIES

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-1801 to 91-1807. (10107 to 10113) Repealed.

Repeal

Sections 91-1801 to 91-1807 (Secs. 95 to 101, pp. 261, 262, L. 1877), relating to powers and duties of special administrators, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 19—CHANGES IN ADMINISTRATION ON SUBSEQUENT DISCOVERY OF A WILL OR DEATH, INCOMPETENCY OR RESIGNATION OF EXECUTORS AND ADMINISTRATORS

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-1901 to 91-1906. (10114 to 10119) Repealed.

Repeal

Sections 91-1901 to 91-1906 (Secs. 102 to 107, pp. 262 to 264, L. 1877), relating to disqualification or resignation of an administrator or executor, and the authority of his appointed successor, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 20—DISQUALIFICATION OF JUDGE AND TRANSFER OF ADMINISTRATION

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-2002 to 91-2004. (10121 to 10123) Repealed.

Repeal

Sections 91-2002 to 91-2004 (Secs. 110 to 112, pp. 264, 265, L. 1877), relating to the transfer of probate proceedings to an adjoining county, or the transfer of such proceedings back to the court of origin, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 21—REMOVAL AND SUSPENSION OF EXECUTORS AND ADMINISTRATORS

91-2101 to 91-2105. (10124 to 10128) **Repealed.**

Repeal

Sections 91-2101 to 91-2105 (Secs. 113 to 117, pp. 266, 267, L. 1877), relating to removal and suspension of executors and administrators, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 22—INVENTORY AND APPRAISEMENT—POSSESSION OF ESTATE

91-2201 to 91-2204. (10129 to 10132) **Repealed.**

Repeal

Sections 91-2201 to 91-2204 (Secs. 118 to 121, p. 267, L. 1877; Sec. 1, Ch. 94, L. 1963), relating to taking inventory of the estate and the appointment of appraisers, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-2205. (10133) **Repealed.**

Repeal

Section 91-2205 (Sec. 122, p. 268, L. 1877), relating to the indebtedness of an executor to the estate, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-2207 to 91-2213. (10135 to 10139) **Repealed.**

Repeal

Sections 91-2207 to 91-2213 (Secs. 124 to 128, pp. 268, 269, L. 1877; Secs. 1, 2, Ch. 119, L. 1969), relating to the inventory, possession, and delivery of the property of the estate, and the withdrawal of bank deposits by affidavit of the surviving spouse, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 23—PROCEDURE TO COMPEL DISCLOSURE OF PROPERTY OF ESTATE—LIABILITY FOR EMBEZZLEMENT

Section 91-2301. Mishandling of estate before grant of letters testamentary.
91-2302. Citation to person suspected of having mishandled estate.
91-2303. Refusal to obey citation—order for disclosure.

91-2301. (10140) **Mishandling of estate before grant of letters testamentary.** If any person, before the granting of letters testamentary or of administration, commits theft of or alienates any of the moneys, goods, chattels, or effects of a decedent, he is charged therewith and liable to an action by the executor or administrator of the estate for double the value of the property so mishandled, to be recovered for the benefit of the estate.

History: En. Sec. 129, p. 270, L. 1877; re-en. Sec. 129, 2nd Div. Rev. Stat. 1879; re-en. Sec. 129, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2570, C. Civ. Proc. 1895; re-en. Sec. 7504, Rev. C. 1907; re-en. Sec. 10140, R. C. M. 1921; amd. Sec. 66, Ch. 359, L. 1977. Cal. C. Civ. Proc. Sec. 1458.

Amendments

The 1977 amendment substituted "commits theft of" for "embezzles"; and substituted "mishandled" for "embezzled or alienated."

91-2302. (10141) **Citation to person suspected of having mishandled estate.** If any executor or administrator or any person interested in the

estate of a decedent complains to the court or judge, on oath, that any person is suspected of having concealed, smuggled, conveyed away, disposed of, or committed theft of any moneys, goods, or chattels of the decedent or has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings which contain evidences of or tend to disclose the right, title, interest, or claim of the decedent to any real or personal estate, any claim or demand, or any lost will, the court or judge may cite such person to appear before the court and may examine him on oath upon the matter of the complaint. If such person is not in the county where the decedent dies or where letters have been granted, he may be cited and examined either before the district court or judge of the county where the decedent dies or where letters have been granted. But if he appears and is found innocent, his necessary expenses must be allowed him out of the estate.

History: En. Sec. 130, p. 270, L. 1877; re-en. Sec. 130, 2nd Div. Rev. Stat. 1879; re-en. Sec. 130, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2571, C. Civ. Proc. 1895; re-en. Sec. 7505, Rev. C. 1907; re-en. Sec. 10141, R. C. M. 1921; amd. Sec. 67, Ch. 359, L. 1977. Cal. C. Civ. Proc. Sec. 1459.

Amendments

The 1977 amendment substituted "committed theft of" in the first sentence for "embezzled"; and made minor changes in phraseology and punctuation.

91-2303. (10142) **Refusal to obey citation—order for disclosure.** If the person so cited refuses to appear and submit to an examination or to answer such interrogatories as may be put to him touching the matters of the complaint, the court or judge may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he submits to the order of the court or is discharged according to law. If, upon examination, it appears that he has concealed, smuggled, conveyed away, disposed of, or committed theft of any moneys, goods, or chattels of the decedent or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings containing evidence of or tending to disclose the right, title, interest, or claim of the decedent to any real or personal estate, claim, or demand or any lost will of the decedent, the court or judge may make an order requiring such person to disclose his knowledge thereof to the executor or administrator and may commit him to the county jail, there to remain until the order is complied with or he is discharged according to law; and all such interrogatories and answers must be in writing, signed by the party examined, and filed in the court. The order for such disclosure made upon such examination shall be prima facie evidence of the right of the executor or administrator to such property in any action brought for the recovery thereof, and any judgment recovered therein must be for double the value of the property as assessed by the court or jury or for the return of the property and damages in addition thereto equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side.

History: En. Sec. 131, p. 271, L. 1877; re-en. Sec. 131, 2nd Div. Rev. Stat. 1879; re-en. Sec. 131, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2572, C. Civ. Proc. 1895; re-en. Sec. 7506, Rev. C. 1907; re-en. Sec. 10142, R. C. M. 1921; amd. Sec. 68, Ch. 359, L. 1977. Cal. C. Civ. Proc. Sec. 1460.

Amendments

The 1977 amendment substituted "committed theft of" in the second sentence for "embezzled"; and made minor changes in phraseology and punctuation.

CHAPTER 24—PROVISION FOR SUPPORT OF FAMILY

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-2401 to 91-2407. (10144 to 10150) **Repealed.**

Repeal

Sections 91-2401 to 91-2407 (Secs. 133 to 139, pp. 272 to 274, L. 1877; Sec. 1, Ch. 66, L. 1935; Sec. 1, Ch. 57, L. 1941; Sec. 1, Ch. 14, L. 1951), relating to support of decedent's family during administration of the estate, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 25—THE HOMESTEAD—PROCEDURE TO SET APART

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-2501 to 91-2507. (10151 to 10157) **Repealed.**

Repeal

Sections 91-2501 to 91-2507 (Secs. 141 to 146, pp. 274 to 276, L. 1877; Secs. 2590 to 2596, C. Civ. Proc. 1895), relating to procedures to set apart a recorded homestead, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 26—DOWER—PROCEDURE TO ASSIGN

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-2601 to 91-2612. (10158 to 10169) **Repealed.**

Repeal

Sections 91-2601 to 91-2612 (Secs. 3070 to 3081, C. Civ. Proc. 1895), relating to dower rights and procedures for enforcement of dower rights, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 27—CLAIMS AGAINST ESTATE

Section 91-2706. Judge may present claim, and action thereon.
91-2725. Payment of debt to stop running of interest.

91-2701 to 91-2705. (10170 to 10174) **Repealed.**

Repeal

Sections 91-2701 to 91-2705 (Secs. 147 to 151, pp. 276, 277, L. 1877; Sec. 1, Ch. 162, L. 1935; Sec. 1, Ch. 40, L. 1953), relating to procedures for filing claims against an estate, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-2706. (10175) **Judge may present claim, and action thereon.** Any judge of the district court may present a claim against the estate of a decedent for allowance to the personal representative thereof, and in case of its rejection the personal representative has the same right to petition or sue in a proper court for its recovery as other persons have when their claims against an estate are rejected.

History: En. Sec. 152, p. 277, L. 1877; re-en. Sec. 152, 2nd Div. Rev. Stat. 1879; re-en. Sec. 152, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2605, C. Civ. Proc. 1895; re-en. Sec. 7527, Rev. C. 1907; re-en. Sec. 10175, R. C. M. 1921; amd. Sec. 9, Ch. 263, L. 1975. Cal. C. Civ. Proc. Sec. 1495.

Amendments

The 1975 amendment substituted "personal representative" for "executor or administrator" in two places; deleted from the middle of the section "if the executor or administrator allows the claim, he must in writing designate some judge of the district court of an adjoining county or district, who, upon the presentation of such claim to him, is vested with power to allow or reject it, and the judge presenting such claim"; deleted "or by such judge as shall have acted upon it" before "has the same right"; inserted "petition or" before "sue in a proper court"; and made minor changes in phraseology.

91-2707 to 91-2712. (10176 to 10181) Repealed.

Repeal

Sections 91-2707 to 91-2712 (Secs. 153 to 157, pp. 278, 279; Secs. 1, 3, Ch. 145, L. 1921; Sec. 1, Ch. 11, L. 1925; Sec. 1, Ch. 192, L. 1939), relating to allowance and rejection of claims against an estate, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-2714. (10183) Repealed.

Repeal

Section 91-2714 (Sec. 159, p. 280, L. 1877), relating to actions pending for claims against the decedent at the time of his death, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-2715 to 91-2720. (10184 to 10189) Repealed.

Repeal

Sections 91-2715 to 91-2720 (Secs. 160 to 165, pp. 280 to 282, L. 1877), relating to partial allowance of claims; effects of judgment against the estate; execution of judgments against testator; and trial of doubtful claims by referee, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-2722. (10191) Repealed.

Repeal

Section 91-2722 (Sec. 167, p. 282, L. 1877), relating to the claims of the executor or administrator against the estate, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-2723, 91-2724. (10192, 10193) Repealed.

Repeal

Sections 91-2723, 91-2724 (Secs. 168, 169, p. 283, L. 1877), relating to notice to creditors and administrator's statement of claims, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-2725. (10194) Payment of debt to stop running of interest. If there be any debt of the decedent bearing interest, whether presented or not, the personal representative may pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid.

History: En. Sec. 170, p. 283, L. 1877; re-en. Sec. 170, 2nd Div. Rev. Stat. 1879; re-en. Sec. 170, 2nd Div. Comp. Stat. 1887; amd. Sec. 2623, C. Civ. Proc. 1895; re-en. Sec. 7545, Rev. C. 1907; Re-en. Sec. 10194, R. C. M. 1921; amd. Sec. 10, Ch. 263, L. 1975. Cal. C. Civ. Proc. Sec. 1513.

Amendments

The 1975 amendment substituted "personal representative" for "executor or administrator"; and deleted "by order of the court or judge" before "pay the amount then accumulated."

CHAPTER 28—SALES OF PROPERTY OF ESTATE IN GENERAL—BORROWING MONEY—SALES OF CERTAIN PERSONAL PROPERTY

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-2801 to 91-2810. (10195 to 10204) Repealed.

Repeal

Sections 91-2801 to 91-2810 (Secs. 171 to 180, pp. 284 to 286, L. 1877; Sec. 1, Ch. 77, L. 1937), relating to payment of debts of the estate and authority of the executor to borrow money for payment of debts; and relating to sale by the executor of the property of the estate, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 29—SUMMARY SALE OF MINES AND MINING INTERESTS

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-2901, 91-2902. (10205, 10206) Repealed.

Repeal

Sections 91-2901, 91-2902 (Secs. 181, 182, p. 287, L. 1877; Secs. 1, 2, Ch. 84, L. 1941), relating to sale of mines and mining interests, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 30—SALES OF REAL ESTATE AND CONTRACTS FOR PURCHASE OF LAND

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-3001 to 91-3039. (10210 to 10248) Repealed.

Repeal

Sections 91-3001 to 91-3039 (Secs. 186 to 224, pp. 288 to 300, L. 1877; Secs. 1 to 6, Ch. 3, L. 1915; Secs. 1 to 3, Ch. 67, L. 1927; Secs. 1, 2, Ch. 159, L. 1929; Sec. 1, Ch. 49, L. 1943; Sec. 1, Ch. 54, L. 1947; Secs. 1 to 3, Ch. 112, L. 1949; Sec. 1, Ch. 170, L. 1951; Sec. 1, Ch. 64, L. 1969), relating to sales of real estate and contracts for purchase of real estate, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 31—MORTGAGING AND LEASING REAL ESTATE

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-3101 to 91-3109. (10249 to 10256.1) Repealed.

Repeal

Sections 91-3101 to 91-3109 (Secs. 2720 to 2722, C. Civ. Proc. 1895; Secs. 1 to 3, Ch. 187, L. 1919; Sec. 1, Ch. 18, L. 1921; Sec. 1, Ch. 113, L. 1923; Secs. 1, 2, Ch. 70, L. 1927; Secs. 1, 2, Ch. 170, L. 1941; Sec. 1, Ch. 156, L. 1953; Sec. 1, Ch. 62, L. 1955; Sec. 1, Ch. 217, L. 1973), relating to the mortgaging and leasing of real estate, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 32—GENERAL POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS

91-3201 to 91-3204. (10257 to 10260) Repealed.

Repeal

Sections 91-3201 to 91-3204 (Secs. 225 to 228, pp. 300, 301, L. 1877), relating to the duty of an administrator to take possession of the decedent's estate and to sue for loss or damage to the assets of the

estate; and relating to the right of other persons to sue the administrator for loss or damage to the decedent's estate, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-3206. (10262) **Repealed.**

Repeal

Section 91-3206 (Sec. 230, p. 301, L. 1877), relating to the right of an executor or administrator to bring action on the bond of a former executor or administrator, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-3208. (10264) **Repealed.**

Repeal

Section 91-3208 (Sec. 232, p. 302, L. 1877), relating to the power of an executor or administrator to settle, compromise or compound debts owed to the estate, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-3209 to 91-3212. (10265 to 10267.1) **Repealed.**

Repeal

Sections 91-3209 to 91-3212 (Secs. 233 to 235, p. 302, L. 1877; Sec. 1, Ch. 22, L. 1933), relating to powers of an administrator to recover property conveyed by the testator in fraud of creditors, and to mortgage personal property of the estate, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 33—CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-3301 to 91-3313. (10268 to 10280) **Repealed.**

Repeal

Sections 91-3301 to 91-3313 (Secs. 236 to 246, pp. 302 to 304; Secs. 3, 4, pp. 145, 146, L. 1899; Sec. 1, Ch. 4, L. 1915; Sec. 1, Ch. 173, L. 1937; Sec. 1, Ch. 118, L. 1939; Sec. 18, Ch. 423, L. 1971), relating to conveyance of real estate by executors and administrators, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 34—LIABILITIES AND COMPENSATION OF EXECUTORS AND ADMINISTRATORS

Section 91-3406. Claims for less than nominal value.

91-3401. (10281) **Repealed.**

Repeal

Section 91-3401 (Sec. 247, p. 304, L. 1877), relating to the personal liability of an executor or administrator, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-3405. (10285) **Repealed.**

Repeal

Section 91-3405 (Sec. 251, p. 305, L. 1877; Sec. 1, Ch. 55, L. 1919), relating to expenses and compensation of the executor or administrator, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-3406. (10286) **Claims for less than nominal value.** If the personal representative pays any claim for less than its nominal value, he is only entitled to charge in his account the amount he actually paid.

History: En. Sec. 252, p. 305, L. 1877; re-en. Sec. 252, 2nd Div. Rev. Stat. 1879; re-en. Sec. 252, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2775, C. Civ. Proc. 1895; re-en. Sec. 7632, Rev. C. 1907; re-en. Sec. 10286, R. C. M. 1921; amd. Sec. 13, Ch. 365, L. 1974. Cal. C. Civ. Proc. Sec. 1617.

Amendments

The 1974 amendment deleted "No executor or administrator shall purchase any claim against the estate he represents" at the beginning of the section; and substituted "If the personal representative pays" for "if he pays."

91-3407. (10287) Repealed.

Repeal

Section 91-3407 (Sec. 253, p. 305, L. 1877; Sec. 1, p. 59, Ex. L. 1877; Sec. 1, Ch. 4, L. 1905), relating to the rate of compensation of executors and administrators, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 35—ACCOUNTING AND SETTLEMENT BY EXECUTORS AND ADMINISTRATORS

(Repealed—Section 1, Chapter 272, Laws of 1969; Section 15, Chapter 263, Laws of 1975)

91-3501 to 91-3506. (10288 to 10294) Repealed.

Repeal

Sections 91-3501 to 91-3506 (Secs. 254 to 259, pp. 306, 307, L. 1877), relating to the accounts to be kept by an executor or administrator, were repealed by Sec. 15, Ch. 263, Laws 1975.

91-3507. (10294) Repealed.

Repeal

Section 91-3507 (Sec. 260, p. 307, L. 1877), relating to the rendering of accounts after notice to creditors, was repealed by Sec. 1, Ch. 272, Laws 1969.

91-3508 to 91-3519. (10295 to 10306) Repealed.

Repeal

Sections 91-3508 to 91-3519 (Secs. 261 to 272, pp. 307 to 310, L. 1877; Sec. 1, p. 145, L. 1889; Sec. 1, Ch. 122, L. 1913; Sec. 1, Ch. 46, L. 1919; Sec. 1, Ch. 11, L. 1927), relating to accounts and final settlement of an estate, were repealed by Sec. 15, Ch. 263, Laws 1975.

CHAPTER 36—DEBTS OF THE ESTATE—PAYMENT OF

(Repealed—Section 2, Chapter 365, Laws of 1974; Section 15, Chapter 263, Laws of 1975)

91-3601 to 91-3608. (10307 to 10314) Repealed.

Repeal

Sections 91-3601 to 91-3608 (Secs. 273 to 280, pp. 310 to 312, L. 1877; Sec. 1, Ch. 141, L. 1933), relating to payment of the debts of the estate, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-3609 to 91-3611. (10315 to 10317) Repealed.

Repeal

Sections 91-3609 to 91-3611 (Secs. 281 to 283, pp. 312, 313, L. 1877), relating to payment of legacies, distribution of the estate, and submission of final account, were repealed by Sec. 15, Ch. 263, Laws 1975.

CHAPTER 37—PARTIAL DISTRIBUTION PRIOR TO FINAL SETTLEMENT OF ESTATE

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-3701 to 91-3706. (10318 to 10323) Repealed.

Repeal

Sections 91-3701 to 91-3706 (Secs. 284 to 288, pp. 313, 314, L. 1877; Secs. 2830 to 2835, C. Civ. Proc. 1895), relating to partial distribution prior to final settlement of estate, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 38—DETERMINATION OF HEIRSHIP AND INTEREST IN ESTATE

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-3801 to 91-3803. (10324 to 10326) Repealed.

Repeal

Sections 91-3801 to 91-3803 (Secs. 2840 to 2842, C. Civ. Proc. 1895; Sec. 1, Ch. 54, L. 1913; Sec. 1, Ch. 234, L. 1921; Sec. 1, Ch. 28, L. 1951; Sec. 1, Ch. 29, L. 1951), relating to proceedings to determine heirship, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 39—FINAL DISTRIBUTION OF ESTATE —DISCHARGE OF EXECUTOR OR ADMINISTRATOR

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-3901 to 91-3907. (10327 to 10333) Repealed.

Repeal

Sections 91-3901 to 91-3907 (Secs. 289 to 293, pp. 315, 316, L. 1877; Secs. 2843 to 2846, 2886, 2887, C. Civ. Proc. 1895; Sec. 2, Ch. 54, L. 1913; Sec. 2, Ch. 234, L. 1921; Sec. 1, Ch. 54, L. 1951; Sec. 1, Ch. 260, L. 1971), relating to final distribution of the estate and discharge of the executor or administrator, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 40—PARTITION OF UNDIVIDED ESTATES AFTER DISTRIBUTION

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-4001 to 91-4012. (10334 to 10345) Repealed.

Repeal

Sections 91-4001 to 91-4012 (Secs. 294 to 305, pp. 317 to 320, L. 1877), relating to partitioning of an undivided inheritance after distribution to the joint heirs, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 41—APPOINTMENT OF AGENT FOR PERSONS RESIDING OUT OF THE STATE

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-4101 to 91-4106. (10346 to 10351) Repealed.

Repeal

Sections 91-4101 to 91-4106 (Secs. 306 to 311, pp. 320 to 322, L. 1877), relating to the appointment of an agent for an absentee heir, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 42—SETTLEMENT OF ACCOUNTS OF TRUSTEES AFTER DISTRIBUTION OF ESTATE

Section 91-4201. Court not to lose jurisdiction of trusts by distribution—accounts of trustees.

91-4201. (10352) **Court not to lose jurisdiction of trusts by distribution—accounts of trustees.** Where any trust has been created by or under any will to continue after distribution, the district court shall not lose jurisdiction of the estate by final distribution, but shall retain jurisdiction thereof for the purpose of the settlement of accounts under the trust as provided in Title 86.

History: En. Sec. 2900, C. Civ. Proc. 1895; re-en. Sec. 7698, Rev. C. 1907; re-en. Sec. 10352, R. C. M. 1921; amd. Sec. 2, Ch. 24, L. 1969. Cal. C. Civ. Proc. Sec. 1699.

Amendments

The 1969 amendment added "as provided in Title 86" at the end of the first sentence; and deleted the former second through the fifth sentences. For text, see parent volume.

CHAPTER 43—PROBATE PROCEEDINGS, MISCELLANEOUS—CITATIONS—APPEALS, ETC.

Section 91-4324. Validation of fiduciary sales before 1965.
91-4325. Validation of fiduciary sales before 1967.
91-4326. Validation of fiduciary sales before 1969.
91-4327. Validation of fiduciary sales before 1971.
91-4328. Validation of fiduciary sales before 1973.

91-4306. (10360) Citation—how issued.

Refusal to Issue

Where clerk of court mistakenly refused to issue citation pursuant to this section, resulting in lapse under statute of limitations, it was improper for the district judge to issue nunc pro tunc order backdating such citation. State ex rel. Craig v. District Court, 153 M 427, 458 P 2d 608.

91-4311. (10365) Repealed.

Repeal

Section 91-4311 (Sec. 324, p. 324, L. 1877), relating to the applicability of civil procedures of Title 93 to probate proceedings, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-4314 to 91-4316. (10368 to 10370) Repealed.

Repeal

Sections 91-4314 to 91-4316 (Secs. 327 to 329, p. 325, L. 1877), relating to trial of issues in probate proceedings, and making provision for court appointed attorneys for minor or absent heirs or creditors, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-4321. (10375) Repealed.

Repeal

Section 91-4321 (Sec. 2930, C. Civ. Proc. 1895; Sec. 1, Ch. 130, L. 1943; Sec. 75, Ch. 391, L. 1973), relating to procedure for terminating a life estate or joint tenancy, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-4321.1. Repealed.

Repeal

Section 91-4321.1 (Sec. 1, Ch. 303, L. 1975), relating to joint tenancies, was repealed by Sec. 5, Ch. 409, Laws 1977.

91-4322. (10376) Repealed.

Repeal

Section 91-4322 (Sec. 1, p. 219, L. 1891; Sec. 1, Ch. 58, L. 1921; Sec. 1, Ch. 14, L. 1935; Sec. 1, Ch. 178, L. 1937), relating to the power of the clerk to issue necessary orders and notices of hearings for probate matters, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-4324. Validation of fiduciary sales before 1965. All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to the effective date of this act, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's or guardian's deed or conveyance to such purchaser, and, in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 60, L. 1965.

Title of Act

An act validating deeds and conveyances in sales of land and personal property heretofore made by trustees, executors, administrators and guardians, curing defects and irregularities in such sales, containing a repealing clause.

Repealing Clause

Section 2 of Ch. 60, Laws 1965 repealed all acts and parts of acts in conflict therewith.

91-4325. Validation of fiduciary sales before 1967. All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to January 1, 1967, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's or guardian's deed or conveyance to such purchaser, and, in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 182, L. 1967.

Title of Act

An act validating deeds and conveyances in sales of land and personal prop-

erty made by trustees, executors, administrators and guardians prior to January 1, 1967, curing defects and irregularities in such sales.

91-4326. Validation of fiduciary sales before 1969. All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to January 1, 1969, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's, or guardian's deed or conveyance to such purchaser, and in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 75, L. 1969.

Title of Act

An act validating deeds and conveyances in sales of land and personal property made by trustees, executors, administrators and guardians prior to January 1, 1969, curing defects and irregularities in such sales.

91-4327. Validation of fiduciary sales before 1971. All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to January 1, 1971, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's or guardian's deed, or conveyance to such purchaser, and in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 98, L. 1971.

Title of Act

An act validating deeds and conveyances in sales of land and personal property made by trustees, executors, administrators and guardians prior to January 1, 1971, curing defects and irregularities in such sales.

91-4328. Validation of fiduciary sales before 1973. All sales, provided no action is now pending to set aside such deed or conveyance, by trustees,

executors, administrators and guardians which previous to January 1, 1973, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's or guardian's deed or conveyance to such purchaser, and in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 81, L. 1973.

Title of Act

An act validating deeds and conveyances in sales of land and personal property made by trustees, executors, administrators and guardians prior to January 1, 1973, curing defects and irregularities in such sales.

CHAPTER 44—INHERITANCE TAX

Section 91-4405. Joint estates, government bonds, tenants by the entirety, joint bank accounts, and similarly held property.
91-4409. Primary rates, where remaining amount not in excess of $25,000.
91-4410. Other rates, where remaining amount in excess of $25,000.
91-4411. Estate tax.
91-4414. Exemptions.
91-4414.1. Discretionary waiver of inheritance tax of surviving spouse.
91-4415. When payment due—lien of tax—liability for payment—place of payment—receipts—receipt or bond required before final accounting allowed.
91-4416. Discount—interest.
91-4417. Powers of representative in collection and payment of tax—collection from devisees.
91-4418. Refunding of tax—when authorized—manner of refunding—advance payment of tax for relief from penalty and interest.
91-4419. Permission for deferred payment of tax.
91-4421. Payment of tax on transfer of securities by foreign representative—duty of holder of securities or assets of nonresident decedent—apportionment of deductions—information to be given department of revenue—amount of tax to be retained on delivery of assets—penalties.
91-4423. Jurisdiction of district court.
91-4425. Determination of tax due from estate of nonresident decedent—application—appeals.
91-4426. Determination when application not made.
91-4427. Special appraiser.
91-4428. Duties, powers and compensation of appraisers.
91-4429. Hearing by the court.
91-4430. Notice of hearing.
91-4431. Commissioner of insurance to value future estates, etc.
91-4437. Court order determining tax—contents.
91-4438. Rehearing within sixty days.
91-4439. Reappraisement in the district court within one year.
91-4440. Collection of unpaid taxes.
91-4442. Special administration to determine tax where transfer made in contemplation of death.
91-4443. Public administrator's duty to investigate concerning tax—compensation.

91-4444. State department of revenue to supervise inheritance tax.
91-4445. Powers and duties of the department.
91-4446. Powers and duties in nonresident estates.
91-4447. Duty of the legal department of state.
91-4448. Forms and blanks.
91-4449. Duties of clerks of district courts.
91-4450. Monthly reports of county treasurer—payment of collections to state department of revenue—interest on unpaid amounts.
91-4451. Composition and compromise.
91-4453. Definitions.
91-4454. Employment of assistants by department of revenue—compensation.
91-4455. Hearings by department of revenue—witnesses—false testimony as perjury—compensation.
91-4459. Checking by county clerk of records and transfers—report to department of revenue.
91-4468. Personal representative to furnish information—department to determine tax—appeal.
91-4470. Determination of inheritance tax—no personal representative.
91-4471. Termination of interest in property.
91-4472. Determination of inheritance tax on transfer of certain interests in estate with personal representative.
91-4473. Attorney's fee.

91-4401. (10400.1) Taxes on transfer—when and how imposed.

Dower Subject to Inheritance Tax

A widow who takes property under statutory dower allowance takes under the intestate laws and the property will be subject to inheritance tax. Stovall v. Department of Revenue, — M —, 527 P 2d 62.

Tenants in Common

Where husband died after he and his wife had conveyed land owned as tenants in common to sons, reserving a life estate with right of survivorship, wife, who obtained deceased husband's one-half interest in land was subject to inheritance tax on husband's interest under section 91-4405, but sons' interests were not taxable until termination of the mother's life estate. In re Hess' Estate, 145 M 552, 403 P 2d 748.

91-4402. (10400.1) Transfers in contemplation of death.

Possession Postponed

Where husband and wife held real property as tenants in common, but transferred one half of the property to one son, and the other half to the other son, reserving a life estate in each piece of property with right of survivorship, on father's death sons were not subject to inheritance tax until termination of the mother's intervening life estate. In re Hess' Estate, 145 M 552, 403 P 2d 748.

91-4404. (10400.1) Transfers under power of appointment.

Foreign Property

Where resident of Montana had unexercised general power of appointment over trust property in England, this power to dispose of property at death was equivalent of ownership, and Montana inheritance tax was owed on the property. Matter of Estate of Ward, — M —, 543 P 2d 382.

91-4405. (10400.1) Joint estates, government bonds, tenants by the entirety, joint bank accounts, and similarly held property. Whenever any property, however acquired, real or personal, tangible or intangible, including government bonds of the United States, is inscribed in co-ownership form, held by two or more persons in joint tenancy or as tenants by the entirety, or is deposited in any bank or other depositary in the joint names of two or more persons and payable to the survivor or survivors of them upon the death of one of them, the right of the survivor or survivors to the immediate possession or ownership is a taxable trans-

fer. The tax is upon the transfer of decedent's interest, one-half or other proper fraction, as evidenced by the written instrument creating the same, as though the property to which the transfer relates belonged to the joint tenants, tenants by the entirety, joint depositors, holders in co-ownership form, or persons, as tenants in common, and had been, for inheritance tax purposes, bequeathed or devised to the survivor or survivors by will, except such part thereof as may be shown to have originally belonged to the survivor and never to have belonged to the decedent when the surviving joint tenant is a spouse of the decedent. In all other cases the full value of the property shall be taxable except such portion thereof that originally belonged to the survivor and as to which the decedent had made no contribution; if the decedent had made a contribution to the ownership of such property the amount of such contribution shall be taxable. This section shall not be construed to repeal or modify the provisions of section 91-4402.

History: En. Sec. 1 (part), Ch. 65, L. 1923; amd. Sec. 1 (part), Ch. 150, L. 1925; amd. Sec. 1 (part), Ch. 105, L. 1927; amd. Sec. 1 (part), Ch. 186, L. 1935; amd. Sec. 1, Ch. 181, L. 1951; amd. Sec. 1, Ch. 490, L. 1977.

Amendments

The 1977 amendment added "when the surviving joint tenant is a spouse of the decedent" to the end of the second sentence; inserted the third sentence; and made minor changes in phraseology and punctuation.

Applicable Property

Since the 1951 amendment, this section, including the clause excepting from taxation property shown to have belonged to the survivor and not the decedent, applies whether the property is tangible or intangible or whether the purchase price or the actual property is the subject of the joint tenancy. In re Parks' Estate, 145 M 333, 401 P 2d 83.

Corporate Stock

Corporate stock registered in both the husband's and wife's names, but purchased by the wife, and in her possession, was not subject to inheritance tax on death of husband. In re Parks' Estate, 145 M 333, 401 P 2d 83.

Nontaxable Transfers

The 1951 amendment, stipulating that upon the death of one of the spouses, "the right of the survivor or survivors to the immediate possesion or ownership is a taxable transfer," when read in conjunction with the clause excepting property shown to have belonged originally to the survivor, shows that a "transfer" is taxed, but what in reality is not a "transfer" is not taxed. In re Parks' Estate, 145 M 333, 401 P 2d 83.

References

In re Hess' Estate, 145 M 552, 403 P 2d 748.

91-4407. (10400.1) **Tax on clear market value—deductions.**

Clear Market Value

Clear market value as used in this section means net value in the open market as determined by price willing but not obligated buyer would pay and willing but not obligated seller would accept, with both parties knowing all pertinent facts affecting value. In re Estate of Power, 156 M 100, 476 P 2d 506.

Valuation of United States Treasury bonds redeemable at par in discharge of federal estate tax liability must be based on clear market value on date of decedent's death for purposes of this section rather than on par value. In re Estate of Power, 156 M 100, 476 P 2d 506.

References

Cited in Salvation Army v. State, 144 M 415, 396 P 2d 463, 466.

91-4409. (10400.2) **Primary rates, where remaining amount not in excess of $25,000.** The exemptions allowed by 91-4414 shall be subtracted from the total value of property or beneficial interests transferred to any person, institution, association, corporation, or political entity by the decedent. A tax is imposed upon the first $25,000 in value of the remaining

amount of the total value of property or beneficial interests at the following rates:

(1) at the rate of 2% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is:

(a) the husband, wife, lineal issue, or lineal ancestor of the decedent;

(b) any child adopted as such in conformity with law or any child to whom such decedent for not less than 10 years prior to such transfer stood in the mutually acknowledged relation of a parent, provided such relationship began at or before the child's 15th birthday and was continuous for 10 years; or

(c) any lineal issue of such adopted or mutually acknowledged child;

(2) at the rate of 4% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is:

(a) the brother or sister or a descendant of a brother or sister of the decedent;

(b) a wife of a son or the husband of a daughter of the decedent;

(3) at the rate of 6% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is the uncle, aunt, or first cousin of the decedent;

(4) at the rate of 8% of the clear value of the interest in property passing if the entity entitled to any beneficial interest in such property is:

(a) a person in any other degree of collateral consanguinity than is hereinbefore stated;

(b) is a stranger in blood to the decedent; or

(c) is a body politic or corporate.

History: En. Sec. 2, Ch. 65, L. 1923; amd. Sec. 1, Ch. 48, Ex. L. 1933; amd. Sec. 2, Ch. 490, L. 1977.

Amendments

The 1977 amendment rewrote the introductory paragraph; and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

91-4410. (10400.3) **Other rates, where remaining amount in excess of $25,000.** The rates in 91-4409 are for convenience termed the primary rates. When the amount of the clear value of the remaining amount of the property or interests exceeds $25,000, the rate of tax upon such excess shall be as follows:

(1) upon all in excess of $25,000 and up to $50,000, two times the primary rate;

(2) upon all in excess of $50,000 and up to $100,000, three times the primary rate;

(3) upon all in excess of $100,000, four times the primary rate.

History: En. Sec. 3, Ch. 65, L. 1923; amd. Sec. 1, Ch. 141, L. 1927; amd. Sec. 2, Ch. 48, Ex. L. 1933; amd. Sec. 3, Ch. 490, L. 1977.

Amendments

The 1977 amendment substituted "the remaining amount of the property" in the second sentence for "such property"; and made minor changes in phraseology, punctuation and style.

91-4411. (10400.3a) **Estate tax.** (a) In addition to the inheritance taxes hereinabove imposed, an estate tax is hereby imposed upon the transfer of the estate of every decedent leaving an estate which is subject to the federal estate tax imposed by the United States of America under the applicable provisions of the Internal Revenue Code and which has, in whole or in part, a taxable situs in this state. The tax hereby imposed upon the transfer of each such estate shall be equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to the portion of the decedent's estate having a taxable situs in this state, less the inheritance taxes, if any, due this state, it being the purpose and intent of this section to impose only such additional taxes hereunder as may be necessary to give this state the full benefit of the maximum tax credit allowable against the federal estate tax imposed with respect to a decedent's estate which has a taxable situs in this state. If only a portion of a decedent's estate has a taxable situs in this state, such maximum tax credit shall be determined by multiplying the entire amount of the credit allowable against the federal estate tax for state death taxes by the percentage which the value of the portion of the decedent's estate which has a taxable situs in this state bears to the value of the entire estate. The tax imposed herein shall be collected by the several county treasurers or the department of revenue for deposit with the state treasurer and distributed as hereafter provided. For the purpose of this tax, the taxable situs of property shall be the same as the taxable situs for inheritance tax purposes.

(b) When payable. The estate tax shall be payable to the county treasurer of the county in which such estate is being probated at the same time, or times, at which the United States tax is payable and shall bear interest, if any, at the same rate and for the same period as such United States tax.

(c) Liability. Administrators, executors, trustees and grantees under a conveyance, made during the grantor's life and taxable hereunder, shall be liable for such taxes with interest, until the same have been paid.

(d) Lien. Said taxes and interest shall be, and remain, a lien on the property for a period of ten (10) years from the date of death, unless sooner paid.

(e) Extension of time. The district court of the county in which such estate is being probated may, for cause shown, extend the time of payment of said tax whenever the circumstances of the case require.

(f) Duplicate returns. It shall be the duty of the personal representative of the estate of any decedent, whose estate may be subject to the payment of a United States estate tax, to file duplicates of the United States estate tax returns with the district court of the county in which such estate is being probated and with the department of revenue. He shall also file with such court and with the department a certificate or other evidence from the bureau of internal revenue showing the amount of the United States estate tax as computed by that department. The department of revenue shall enter an order determining such state estate tax and the amount thereof so due and payable. Any person in interest aggrieved by

such determination shall have the same right to apply for district court determination and of rehearing and appeal as is now provided for in the determination of inheritance taxes.

(g) Intent of subdivisions (a) to (h). It is hereby declared to be the intent and purpose of subdivisions (a) to (h) to obtain for this state the benefit of the credit allowed under the provisions of said Internal Revenue Code, to the extent that this state may be entitled by the provisions of said act, by imposing additional taxes and the same shall be liberally construed to effect this purpose.

(h) Provisions applicable. The provisions of sections 91-4401 to 91-4456, inclusive, relating to the tax on inheritances and transfers, shall apply to the taxes imposed by subdivisions (a) to (h), in so far as the same are applicable and not in conflict with the provisions hereof.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974.

Amendments

The 1969 amendment substituted "Internal Revenue Code of 1954" for "United States Revenue Act of 1926" in subsection (a); and "Internal Revenue Code" for "United States Revenue Act" in subsections (a) and (g).

The 1971 amendment rewrote subsection (a), for previous text of which see parent volume; inserted the ten-year limitation in subsection (d); deleted "who was a resident of this state at the time of his death" after "decedent" in the first sentence of subsection (f); and made minor changes in phraseology.

The 1974 amendment substituted "department of revenue" for "state board of equalization" in the next to last sentence in subsection (a); substituted "personal representative" for "legal representative" in the first sentence of subsection (f); added "and with the department of revenue" at the end of the first sentence of subsection (f); inserted "and with the department" after "such court" in the second sentence of subsection (f); rewrote the third sentence in subsection (f) which read: "The district court shall hear all parties desiring to be heard with respect to the amount of state estate tax and shall enter an order determining such tax and the amount thereof so due and payable"; and inserted "to apply for district court determination and" in the last sentence of subsection (f).

Effective Dates

Section 2 of Ch. 360, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 14, 1969.

Section 2 of Ch. 28, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 16, 1971.

DECISIONS UNDER FORMER LAW

Reference to Federal Act

Fact that 1926 Revenue Act, formerly referred to in this section, has been repealed and 1939 Act has been passed in its place in no way affects validity or effectiveness of this section. In re Estate of McLaughlin, 154 M 318, 462 P 2d 882

91-4412. Credit allowance on inheritance taxes paid, etc.

Tax Paid in Foreign Countries

Estate was not entitled to credit in amount of English death duty paid against Montana inheritance tax, since this section limits tax credits to tax paid to other states and territories of United States, and there is no other law permitting such credit. Matter of Estate of Ward, — M —, 543 P 2d 382.

91-4414. (10400.4) **Exemptions.** (1) The exemption allowed to each person, institution, association, corporation, or body politic shall be taken as provided in 91-4409.

(2) The following transfers are totally exempt:

(a) all property transferred to the state or any of its institutions or to municipal corporations within the state for strictly county, city, town, or municipal purposes;

(b) all property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, if any of the following conditions is present:

(i) the society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;

(ii) the property transferred is limited for use within this state;

(iii) the society, corporation, institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country and at the date of the decedent's death any one of the following conditions existed:

(A) the other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;

(B) the laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession, or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country;

(C) the society, corporation, institution, foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(3) The clear value of one-half of the property distributed or passing to decedent's surviving spouse is exempt.

(4) The following amounts are exempt:

(a) property of the clear value of $40,000 transferred to the surviving spouse of the decedent;

(b) property of the clear value of $15,000 transferred to:

(i) each minor lineal issue of the decedent;

(ii) any minor child adopted as such in conformity with law;

(iii) any minor child to whom such decedent for not less than 10 years prior to such transfer stood in the mutually acknowledged relation of a parent, provided such relationship began at or before the child's 15th birthday and was continuous for 10 years; or

(iv) any minor lineal issue of such adopted or mutually acknowledged child; and

(c) property of the clear value of $7,000 transferred to each of the lineal issue who have attained majority and to each of the other persons who have attained majority described in 91-4409(1).

(5) Any child of a decedent is entitled to credit for so much of the tax paid by the decedent's spouse as applied to any property which is thereafter transferred by or from such spouse to the child, provided the spouse does not survive the decedent to exceed 10 years.

(6) Property of the clear value of $1,000 transferred to each of the persons described in 91-4409(2) is exempt.

(7) No tax may be imposed upon any tangible personal property of a resident decedent when such property is located without this state and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and the tax has actually been paid, secured, or guaranteed, provided such property is not without this state temporarily or for the sole purpose of deposit or safekeeping and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state.

History: En. Sec. 4, Ch. 65, L. 1923; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977.

Amendments

The 1965 amendment increased exemptions specified in the first sentence of paragraph (2) from $17,500 to $20,000 for the wife of the decedent, and from $5,000 to $10,000 for the husband of the decedent.

The 1969 amendment increased exemptions specified in the first sentence of paragraph (2) from $10,000 to $20,000 for the husband of decedent; inserted $5,000 exemption for transfers to children; and included decedent's lineal issue who have attained majority under the $2,000 exemption.

The 1973 amendment inserted "minor" before "child" in two places and before "lineal issue" in one place, all in the first sentence of paragraph (2); inserted "who have attained majority" after "other persons" near the end of the first sentence of paragraph (2); substituted references to the husband or wife of the decedent for "widow" in paragraph (2); inserted "curtesy" in the former second sentence of paragraph (2); and made a minor change in phraseology.

The 1974 amendment increased the exemption specified in the first sentence of paragraph (2) from $20,000 to $25,000 for the surviving spouse.

The 1975 amendment deleted the former second sentence of paragraph (2) which read: "Such exemption to the wife or husband of the decedent shall include all statutory dower, curtesy and other allowances."

The 1977 amendment inserted the subsection (1) designation; substituted "shall be taken as provided in 91-4409" at the end of subsection (1) for "be taken out of the first twenty-five thousand dollars passing by any such transfer to such person, institution, association, corporation or body politic"; redesignated former paragraph (1) as subsection (2); redesignated former subdivisions (1)(a) through (1)(c) as subdivisions (2)(b)(i) through (2)(b)(iii); redesignated former subdivisions (1)(c)(i) through (1)(c)(iii) as subdivisions (2)(b)(iii)(A) through (2)(b)(iii)(C); inserted subsection (3); redesignated paragraph (2) as subsections (4) and (5); increased the exemption in subdivision (4)(a) from $25,000 to $40,000; increased the exemption in subdivision (4)(b) from $5,000 to $15,000; increased the exemption in subdivision (4)(c) from

$2,000 to $7,000; redesignated former paragraphs (3) and (4) as subsections (6) and (7); increased the exemption in subsection (6) from $500 to $1,000; and made minor changes in phraseology, punctuation and style.

Exemption

Any portion of a widow's dower which is not included within her statutory exemption is subject to inheritance tax. Stovall v. Department of Revenue, — M —, 527 P 2d 62.

91-4414.1. Discretionary waiver of inheritance tax of surviving spouse. Notwithstanding any provision of law or statute in conflict herewith, the state department of revenue, in its discretion, is authorized to issue a waiver of inheritance tax in the event of the death of any person leaving any real property or personal property, or both, in joint tenancy with a surviving spouse if the value of the property of the decedent is less than the inheritance exemption allowed by law to the surviving spouse.

History: En. Sec. 1, Ch. 147, L. 1969; amd. Sec. 76, Ch. 391, L. 1973.

Title of Act

An act allowing the state board of equalization, in its discretion, to issue a waiver of inheritance tax in the event of the death of any person leaving any real property or personal property, or both, in joint tenancy with a surviving spouse if the value of the property of the decedent is less than the inheritance exemption allowed by law to the surviving spouse.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

91-4415. (10400.5) **When payment due—lien of tax—liability for payment—place of payment—receipts—receipt or bond required before final accounting allowed.** All taxes imposed by this act shall be due and payable at the time of the death of the decedent, except as hereinafter provided; and every such tax shall be and remain a lien upon the property transferred for a period of ten (10) years from the time of the death of the decedent, whether said death occurred before or after the effective date of this act, unless sooner paid, and the person to whom the property is transferred and the personal representatives and trustees of every estate so transferred shall be personally liable for such tax until its payment.

The tax shall be paid to the state department of revenue for transmittal to the state treasurer or to the treasurer of the county in which the district court is situated having jurisdiction as herein provided or to the treasurer of the county of residence of the decedent if a court proceeding is not involved, and if paid to the county treasurer said treasurer shall receipt therefor, making five copies thereof, and distribute said copies as follows: Original receipt, to the clerk of the district court; first copy, to the personal representative, trustee, or person paying said tax; second copy, attached to and mailed with the report required by section 91-4450, as amended, to the state department of revenue; third copy, to the county clerk and recorder; fourth copy, retained by the treasurer on file in his office. The copy of the receipt given to the personal representative or trustee shall be a proper voucher in the settlement of his accounts.

No personal representative or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce such receipt or a certified copy thereof or unless a bond shall have been filed as prescribed by section 91-4419.

History: En. Sec. 5, Ch. 65, L. 1923; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975.

Compiler's Notes

Section 4 of Ch. 424, Laws 1975 read "If Senate Bill No. 223 [Chapter 303, Laws of 1975] is enacted into law, nothing in this act may be construed to repeal or supersede the provisions of Senate Bill No. 223 as enacted." Section 5 of Ch. 424, Laws 1975, repealed sections 91A-3-1205 and 91-4460 through 91-4467.

Section 1 of Ch. 303, Laws 1975, enacted section 91-4321.1, relating to transfer of joint tenancy property to a surviving spouse. Section 2 of Ch. 303, Laws 1975 read "Section 91A-3-1205, R. C. M. 1947, shall apply only to the termination of joint tenancies between unmarried persons."

Amendments

The 1965 amendment inserted "whether said death occurred before or after the effective date of this act" in the first paragraph.

The 1971 amendment rewrote the second paragraph to provide for payment to the state board of equalization, to provide for quintuplicate instead of triplicate receipts from the county treasurer, and to revise the distribution of copies of the receipts. For previous text, see parent volume.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places in the second paragraph.

The 1975 amendment substituted "personal representatives" or "personal representative" for "administrators, executors" or "administrator, executor" throughout the section; and inserted "or to the treasurer of the county of the residence of the decedent if a court proceeding is not involved" in the first sentence of the second paragraph.

Effective Date

Section 2 of Ch. 34, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 18, 1971.

91-4416. (10400.6) **Discount—interest.** (1) If the tax is paid within 18 months of the death of the decedent, a discount of 5% shall be deducted therefrom. The deduction of this discount of 5% shall be accomplished by paying within the 18-month period from the date that the tax accrues an amount equal to 95% of the total tax declared due by the person making payment.

(2) If such tax is not paid within 18 months of the death of the decedent, interest shall be charged and collected thereon at the rate of 10% a year from the time the tax accrued unless because of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, the tax is not determined and paid as herein provided, in which case interest at the rate of 6% shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which time 10% shall be charged. Litigation to defeat the payment of the tax is not necessary litigation. When permission has been granted to defer payment of tax under 91-4419, interest shall be charged at the rate of 6% after 1 year from the date of death until the date of payment thereof.

History: En. Sec. 6, Ch. 65, L. 1923; amd. Sec. 1, Ch. 15, L. 1967; amd. Sec. 5, Ch. 490, L. 1977.

Amendments

The 1967 amendment inserted the figures in parentheses and added the present second sentence.

The 1977 amendment divided the section into subsections; substituted "within 18 months of the death of the decedent" near the beginning of subsections (1) and (2) for "within 18 months from the accruing thereof"; inserted subsection designation "(2)"; substituted "When permission has been granted to defer payment of tax" at the beginning of the third sentence of subsection (2) for "In all cases when a bond shall be given"; and made minor changes in phraseology, punctuation and style.

91-4417. (10400.7) **Powers of representative in collection and payment of tax—collection from devisees.** Every personal representative shall

have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such personal representative, having in charge or in trust any property for distribution, subject to such tax, shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer, as herein provided. If such property be not in money, he shall collect the tax thereon upon the appraised value thereof, from the person entitled thereto. He shall not deliver or be compelled to deliver any specific property subject to tax under this law, to any person until he shall have collected the tax thereon. If any such devise shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the personal representative, and the tax shall remain a lien or charge on such real property for the period provided in section 91-4415, and the payment thereof shall be enforced by the personal representative, in the same manner that payment of the devise might be enforced, or by the attorney general under section 91-4440. If any such devise shall be given in money to any such person for a limited period, the personal representative shall retain the tax upon the whole amount, but if it be not in money, and agreement as to apportionment cannot be reached by him with the devisee or devisees affected, he shall make application to the appropriate court to make an apportionment if the case require it, of the sum to be paid into the hands of such devisees, and for such further order relative thereto as the case may require, such application being treated as a supervised proceeding.

History: En. Sec. 7, Ch. 65, L. 1923; amd. Sec. 2, Ch. 99, L. 1965; amd. Sec. 5, Ch. 365, L. 1974.

Amendment

The 1965 amendment substituted "for the period provided in section 91-4415" for "until paid" following "charge on such real property" in the fifth sentence.

The 1974 amendment substituted "devisees" for "legatees and distributees" in the caption; substituted "personal representative" for "executor, administrator or trustee" throughout the section; deleted "legacy or" before "property" in three places; substituted "devise" for "legacy" in three places; substituted "appropriate court" for "court having jurisdiction of an accounting by him" in the last sentence; substituted "devisees" for "legatees" in the last sentence; and added "such application being treated as a supervised proceeding" at the end of the last sentence.

91-4418. (10400.8) Refunding of tax—when authorized—manner of refunding—advance payment of tax for relief from penalty and interest. If any debt shall be proved against the estate of the decedent, after the payment of any legacy or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required by the order of the district court having jurisdiction of the tax so deducted or paid, to refund the amount of such debts or any part thereof, an equitable proportion thereof shall be repaid to such person by the personal representative or trustee, if the said tax has not been paid to the county treasurer or state treasurer, or by them, in the proper proportionate shares, if it has been so paid.

Any person from whom such tax is or may be due may make an estimate of and pay the same to the county treasurer, who shall receipt

therefor, at any time before the same is determined by the department of revenue, and shall thereupon be relieved from any interest or penalty upon the amount so paid in the same manner as if the tax were then determined. In the event the person making payment has done so in accordance with the provisions of section 91-4416, pertaining to the allowance of a five per cent (5%) discount, the person making payment shall be relieved from any interest or penalty and shall be allowed the five per cent (5%) discount upon the amount which he so declared due as his inheritance tax liability. The tax may be declared to be due by the paying the amount estimated by the taxpayer to the county treasurer. The money shall be paid to the county treasurer who must deposit same with the state department of revenue. The county treasurer shall pay the collections to the state department of revenue on or before the fifth day of the month following the collection. As soon as the correct amount of inheritance tax has been determined, any excess so paid shall be refunded to the person so paying or entitled thereto by the state department of revenue.

History: En. Sec. 8, Ch. 65, L. 1923; amd. Sec. 1, Ch. 47, L. 1935; amd. Sec. 7, Ch. 126, L. 1963; amd. Sec. 2, Ch. 15, L. 1967; amd. Sec. 1, Ch. 36, L. 1971; amd. Sec. 1, Ch. 316, L. 1973; amd. Sec. 78, Ch. 391, L. 1973; amd. Sec. 3, Ch. 424, L. 1975.

Compiler's Notes

Section 4 of Ch. 424, Laws 1975 read "If Senate Bill No. 223 [Chapter 303, Laws of 1975] is enacted into law, nothing in this act may be construed to repeal or supersede the provisions of Senate Bill No. 223 as enacted." Section 5 of Ch. 424, Laws 1975, repealed sections 91A-3-1205 and 91-4460 through 91-4467.

Section 1 of Ch. 303, Laws 1975, enacted section 91-4321.1, relating to transfer of joint tenancy property to a surviving spouse. Section 2 of Ch. 303, Laws 1975 read "Section 91A-3-1205, R. C. M. 1947, shall apply only to the termination of joint tenancies between unmarried persons."

Amendments

The 1967 amendment inserted the second and third sentences in the second paragraph.

The 1971 amendment deleted "for credit to the clerk of the district court's deposit or trust fund until the correct amount of the tax has been determined" from the end of the fourth sentence of the second paragraph; inserted in the second paragraph a fifth sentence reading "The county treasurer shall include such collections in the next payment he makes to the state board of equalization pursuant to section 91-4450"; substituted "by the state board of equalization based upon the filing of a properly documented claim by the clerk of court" at the end of the section for "by such clerk of court out of said trust fund"; and deleted "and the county treasurer shall receipt for the amount of the inheritance tax so determined by the court" from the end of the section.

Chapter 316, Laws of 1973, substituted "the state department of revenue" at the end of the fourth sentence of the second paragraph for "the county treasurer"; substituted the present fifth sentence of the second paragraph for the fifth sentence inserted by the 1971 amendment; made a separate paragraph of the final sentence of the second paragraph; and substituted "department of revenue" for "board of equalization" in the third paragraph.

Chapter 391, Laws of 1973, substituted "department of revenue" for "board of equalization" in the fifth sentence of the second paragraph as inserted by the 1971 amendment and deleted by Ch. 316, and in the present third paragraph.

The 1975 amendment substituted "personal representatives" for "executor, administrator" in the first paragraph; substituted "county treasurer" for "clerk of courts" or "clerk of the district court" throughout the section; substituted in the first part of the second paragraph "department of revenue" for "court"; deleted in the middle of the second paragraph "filing with the clerk of court of a statement of such declaration or by" before "paying the amount estimated by the taxpayer"; substituted near the end of the second paragraph "to the county treasurer" for "to be due"; and deleted "based upon the filing of a properly documented claim by the clerk of court" from the end of the section.

Repealing Clause

Section 5 of Ch. 424, Laws 1975 read "Sections 91A-3-1205, and 91-4460 through 91-4467, R. C. M. 1947, are repealed."

Effective Date

Section 3 of Ch. 15, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 3, 1967.

91-4419. (10400.9) **Permission for deferred payment of tax.** Any beneficiary of any property chargeable with a tax under 91-4401 through 91-4406 and any personal representative or trustee of the estate may request, within 18 months from the date of the death of decedent or transfer of the property, permission not to pay such tax or a portion thereof until the person beneficially interested comes into the actual possession or enjoyment thereof, or until payment can be made without liquidating a portion of the capital assets. The department may permit the deferral of payment for not more than 5 years, upon such conditions and terms as the department considers necessary to assure payment.

History: En. Sec. 9, Ch. 65, L. 1923; amd. Sec. 79, Ch. 391, L. 1973; amd. Sec. 6, Ch. 490, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the second sentence.

The 1977 amendment completely rewrote this section. For prior version, see parent volume and 1973 amendment note.

91-4421. (10400.11) **Payment of tax on transfer of securities by foreign representative—duty of holder of securities or assets of nonresident decedent—apportionment of deductions—information to be given department of revenue—amount of tax to be retained on delivery of assets—penalties.** (1) * * * [Same as parent volume.]

(2) No safe deposit company, bank, or other institution, person or persons, holding securities or assets of a nonresident decedent, nor any corporation organized under the laws of this state, in which a nonresident decedent held stock, bonds, mortgages, or other securities, at his decease, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the state department of revenue at least ten (10) days prior to the said transfer; nor shall any such safe deposit company, bank, or other institution, person or persons, nor any corporation, deliver or transfer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of the inheritance tax laws, without an order from the proper court authorizing such transfer; and it shall be lawful for the state department of revenue, personally or by representative, to examine said securities or assets at any time before such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank, or other institution, person or persons, or such corporation, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of the inheritance tax laws. The state department of revenue may issue a certificate authorizing the transfer of any such stock, securities or assets whenever it appears to the satisfaction of the said board that no tax is

due thereon; provided, however, that the foregoing provisions shall not apply to shares of stock in any Montana corporation held by a nonresident of Montana at the time of his death whose death occurred on or after January 30, 1945, and who was at the time of his death domiciled in any other district or state of the United States, provided reciprocal rights are granted by such district or state of domicile similar to section 91-4413, and in such event this subsection (2) shall not apply to the transfer of stocks, bonds, mortgages or other securities exempt from taxation under the provisions of section 91-4413, and a Montana corporation, or its agent, may transfer stocks, bonds, mortgages and other securities without any liability for the tax imposed under the provisions of the inheritance tax laws where there are reciprocal rights as set forth in section 91-4413, and in such event no application for consent to transfer such stock need be made to the state department of revenue of the state of Montana, and the corporation, or its duly authorized transfer agent may transfer such shares of stock upon its books without any such application or consent to transfer.

(3) * * * [Same as parent volume.]

(4) The state department of revenue shall require such reports and information and shall make such orders, rules, and regulations as it may deem necessary to enable the department to secure the necessary information from domestic corporations, and to ascertain the amount of and collect such tax; and no holding company or other corporation subject to the provisions of this section shall deliver or transfer any such stocks, bonds, mortgages, or other securities of a Montana corporation without retaining a sufficient portion thereof to pay any tax which may thereafter be assessed under the provisions of this act on account of such transfer, except upon order of the proper court or a certificate of consent of the state department of revenue.

(5) * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; amd. Sec. 1, Ch. 62, L, 1953; amd. Sec. 80, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout subsections (2) and (4).

91-4423. (10400.13) **Jurisdiction of district court.** The district court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under the inheritance tax laws, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of the inheritance tax laws, and to do any act in relation thereto authorized by law to be done by a district court in other matters or proceedings coming within its jurisdiction; and if two or more district courts shall be entitled to exercise any such jurisdiction, the district court first acquiring jurisdiction hereunder, shall retain the same to the exclusion of every other district court.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; amd. Sec. 1, Ch. 79, L. 1951; amd. Sec. 81, Ch. 391, L. 1973; amd. Sec. 6, Ch. 365, L. 1974.

Amendments

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the former second paragraph.

The 1974 amendment deleted "notice to department of revenue required before hearing" in the caption and deleted a second paragraph which read: "Before any decree determining inheritance tax in any estate shall be made by the court, the court shall require proof that due notice has been given to the state department of revenue before the hearing upon the petition to have inheritance tax determined, whether such hearing be at the time of the hearing on the final account or otherwise; and the court shall likewise require proof that a copy of such petition has been given to the department not later than the time of giving the notice; and, before the time fixed in said notice, said department shall cause to be filed, with the clerk of the district court, a certificate signed by the department stating that the amount of the inheritance tax determined to be due the state of Montana as appearing in the report or petition, has been properly computed therein or, if no tax is due, such certificate shall also state; and, if the department shall object to the amount of the tax so computed, the department shall, before the time fixed for the hearing, file with the clerk of the court its written objections thereto, setting forth therein the nature of the objections. If neither such certificate nor objections shall have been filed at the time fixed for hearing, it shall be conclusively presumed that the department concurs in the amount so computed."

91-4425. (10400.15) **Determination of tax due from estate of nonresident decedent—application—appeals.** (1) Any personal representative, trustee, heir, devisee or legatee of a nonresident decedent leaving no estate requiring administration in this state, desiring to transfer any stocks, bonds, mortgages or other securities, or other personal property in this state or within the jurisdiction of this state, may make application to the state department of revenue for the determination whether there is any tax due upon account of the transfer thereof, and the amount of any such tax, and such applicant shall furnish to the state department of revenue therewith, an affidavit setting forth a description and statement of the property owned by the decedent situated within this state, or within its jurisdiction at the time of his death, the true value of said property at the time of decedent's death; a description and statement of the true value of all property owned by the decedent at the time of his death situated outside of this state, and without its jurisdiction; and containing a schedule or statement of all valid claims against the estate of the decedent, including the expenses of his last illness, funeral expenses and expenses of administering his estate. Such applicant shall also, at the same time, furnish the state department of revenue with a certified copy of the last will of the decedent, in case he died testate, or an affidavit setting forth the names, ages, and residence of the heirs at law of decedent in case he died intestate, and the proportion of the entire estate of said decedent inherited by each of said persons, and the relation, if any, which each legatee, devisee, heir, or transferee sustained to the decedent, or person from whom the transfer was made. Such affidavit shall be subscribed and sworn to by the personal representative of the decedent, or some other person having knowledge of the facts therein set forth.

(2) The statement contained in any affidavits, statements or schedules as to values, or otherwise, shall not be binding upon the state department of revenue in case they believe the same to be erroneous or untrue. From the information so furnished them and such other information as they may be able to obtain with reference thereto, the state department

of revenue shall, with reasonable diligence, proceed to ascertain and determine the amount of tax, if any, due under the provisions of this act, and notify the person making the application of the amount of the tax so ascertained and determined to be due; or in case there is no tax to be paid, the state department of revenue shall issue a consent to the transfer of the property so owned by the decedent.

(3) Any person aggrieved by the determination of the state department of revenue in any matter herein provided for in this section may, within thirty (30) days thereafter, appeal to the district court of Lewis and Clark county, by serving on the state department of revenue a notice in writing setting forth his objections to such determination, and by filing such notice, after so serving the same, in the office of the clerk of such court, and thereupon, and within ten (10) days after the service of such notice on them the state department of revenue shall transmit full and complete copies of all original papers and records which have been filed with them in relation to such application, to the clerk of said district court, and thereupon the said district court shall have jurisdiction of such application and proceeding. Upon ten days' notice given by either applicant or the state department of revenue, the matter may be brought on for hearing and determination by said court, either in term time or in vacation, at a general or special term of court, or at chambers, as may be directed by the order of the court.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; amd. Sec. 82, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

91-4426. (10400.16) **Determination when application not made.** Whenever any nonresident decedent, leaving no estate requiring administration in this state, shall leave any stocks, bonds, mortgages, or other securities, or other personal property within the state or within the jurisdiction thereof, and no personal representative, trustee, heir, devisee, or legatee of such nonresident decedent has made application to the state department of revenue for the determination as to whether there is any tax due for the transfer thereof and the amount of such tax, if any, the state department of revenue, upon such matter being called to its attention, shall make an order, and cause a copy thereof to be served upon the personal representative, trustee, heirs, devisees or legatees of such nonresident decedent, ordering and directing that a statement and return, under oath, containing the statements and information prescribed in section 91-4425, be filed with such board within sixty (60) days from the date of such order, or within such further time as the state department of revenue may grant therefor; and if such statement is not filed with the state department of revenue within such time the state department of revenue may then procure such information in any manner it may deem advisable. Upon the filing of such statement, or the procuring of such information by the state department of revenue in the event of a failure to file the same in compliance with such order, the state department of revenue shall proceed in the same manner as prescribed by section 91-4425, and

all provisions thereof with reference to hearings and appeals shall be applicable thereto.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; amd. Sec. 83, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

91-4427. (10400.17) **Special appraiser.** The district court, upon the application of any interested party, including the state department of revenue, shall appoint a competent person as special appraiser to fix the fair market value at the time of the transfer thereof of the property of persons whose estate shall be subject to the payment of any tax imposed by this act.

History: En. Sec. 13, Ch. 65, L. 1923; amd. Sec. 2, Ch. 141, L. 1927; amd. Sec. 84, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

91-4428. (10400.18) **Duties, powers and compensation of appraisers.** Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state department of revenue, and to such persons as the district court may by order direct, of the time and place when he will appraise such property. He shall, at such time and place, appraise the same at its fair market value, as herein prescribed; and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said district court, together with the depositions of the witnesses examined, and such other facts in relation thereto and to the said matter as the said district court may order or require. Every appraiser shall be paid on the certificate of the district court at the rate of not to exceed ten dollars ($10.00) per day for every day actually and necessarily employed in such appraisal, and shall receive his actual and necessary traveling expenses, and witnesses shall be allowed the same fees as are allowed witnesses in civil actions in courts of record and the same shall be paid by the executor, administrator or trustee of such estate in the same manner as provided for the payment of other administration expenses.

History: En. Sec. 14, Ch. 65, L. 1923; amd. Sec. 4, Ch. 150, L. 1925; amd. Sec. 85, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the first sentence.

91-4429. (10400.19) **Hearing by the court.** The report of the special appraiser shall be made in triplicate, and not less than ten (10) days before the hearing thereon one of said triplicates shall be filed in the office of the district court, one to the administrator or the executor, and the other shall be mailed to the state department of revenue. At the time and place of hearing the administration account, the district court shall examine such report, and from the report and other proofs relating to

any such estate shall forthwith determine the cash value of such estate and the amount of tax to which the same is liable; or, the district court without appointing such appraiser may at the time so fixed hear the evidence and determine the cash value of such estate and the amount of tax to which the same is liable.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; amd. Sec. 86, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the first sentence.

91-4430. (10400.20) **Notice of hearing.** Notice of such hearing to determine the inheritance tax shall be given in the manner and for the time provided in section 91A-1-401 of this act, to all interested persons and to the department of revenue.

A copy of the application for exclusion of any property to avoid inheritance tax thereon shall be given with notice of hearing thereof, and notice of any such hearing shall be mailed to the state department of revenue not less than fifteen (15) days before such hearing, upon notice forms provided by the department and containing such information as it may require.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; amd. Sec. 1, Ch. 80, L. 1949; amd. Sec. 87, Ch. 391, L. 1973; amd. Sec. 7, Ch. 365, L. 1974.

Amendments

The 1973 amendment substituted "department of revenue" and "the department" for "board of equalization" and "said board" in the second paragraph.

The 1974 amendment divided the section into two paragraphs; and substituted "in the manner and for the time provided in section 91A-1-401 of this act, to all interested persons and to the department of revenue" for "in the same manner and may be included in the notice of hearing the administration account, as provided by law" in the first paragraph.

91-4431. (10400.21) **Commissioner of insurance to value future estates, etc.** The commissioner of insurance shall, on application of any district court or of the state department of revenue, determine the value of any such future or contingent estates, income, or interests therein limited, contingent, dependent, or determinable upon the life or lives of the person or persons in being, upon the facts contained in the district court's finding and determination and contained in such special appraiser's report, and upon the facts certify the same to the district court or to the state department of revenue, and his certificate shall be presumptive evidence that the method of computation adopted therein is correct.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; amd. Sec. 88, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

91-4437. (10400.27) **Court order determining tax—contents.** When the district court shall be required to make a determination of the value of any estate which is taxable under the inheritance tax laws, and of the tax to which it is liable, an order shall be entered by the court determining the same, which order shall include a statement of (a) the date of death of the decedent, (b) the gross value of the real and personal property of

such estate, stating the principal items thereof, (c) the deductions therefrom allowed by the court, (d) the names and relationship of the persons entitled to receive the same, with the amount received by each, (e) the rates and amounts of inheritance tax for which each such person is liable, and the total amount of tax to be paid, (f) a statement of the amount of interest or penalty due, if any. Such order shall be substantially in the form prescribed by the state department of revenue. A copy of the same shall be delivered or mailed to the county treasurer, the administrator or executor, and the state department of revenue, and no final judgment shall be entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed, and receipts are filed with such court showing the payment of all such taxes, or proof is filed showing that the bond authorized by section 91-4419 has been given.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; amd. Sec. 1, Ch. 161, L. 1971; amd. Sec. 89, Ch. 391, L. 1973; amd. Sec. 8, Ch. 365, L. 1974.

Amendments

The 1971 amendment deleted "the state treasurer" after "the county treasurer" in the third sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

The 1974 amendment inserted "Court" in the caption; and substituted "When the district court shall be required to make a determination" for "Upon the determination by the district court" at the beginning of the section.

91-4438. (10400.28) **Rehearing within sixty days.** When an appraisement, assessment, or determination of tax is made by a district court the attorney general, state department of revenue, public administrator, county attorney, or any person dissatisfied with the appraisement or assessment and determination of such tax may apply for a rehearing thereof before the district court within sixty (60) days from the fixing, assessing and determination of the tax by the district court as herein provided on filing a written notice which shall state the grounds of the application for a rehearing. The rehearing shall be upon the records, proceedings, and proofs had and taken on the hearing as herein provided unless additional or newly discovered evidence be alleged therefor, and a new trial shall not be had or granted unless specially ordered by the district court.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; amd. Sec. 90, Ch. 391, L. 1973; amd. Sec. 9, Ch. 365, L. 1974.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

The 1974 amendment inserted "When an appraisement, assessment, or determination of tax is made by a district court" at the beginning of the section.

91-4439. (10400.29) **Reappraisement in the district court within one year.** Within one year after the entry of an order or decree of the district court determining the value of an estate and assessing the tax thereon, the attorney general or the state department of revenue may, if he (or they) believes that such appraisal, assessment, or determination has been erroneously, fraudulently or collusively made, make application to the district judge for a reappraisal thereof. The district court to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject

to the duties, shall give the notice and receive the compensation provided by sections 91-4428 to 91-4439, inclusive. Such compensation shall be payable by the county treasurer out of any funds he may have on account of any tax imposed under the provisions of this act, upon the certificate of the district judge. The report of such appraiser shall be filed in the office of the clerk of the district court, and thereafter the same proceedings shall be taken and had by and before such district court as herein provided to be taken and had by and before the said court. The determination and assessment of such district court shall supersede the former determination and assessment of such court, and shall be filed in the office of the county treasurer, state treasurer, and state department of revenue.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; amd. Sec. 91, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

91-4440. (10400.30) **Collection of unpaid taxes.** If any county treasurer, state treasurer, or the state department of revenue shall have reason to believe that any tax is due and unpaid under the provisions of this act, after the refusal or neglect of any person liable therefor to pay the same, he or they, shall notify the attorney general in writing of such failure or neglect, and the attorney general, if he have probable cause to believe that such tax is due and unpaid, shall apply to the district court for a citation citing the person liable to pay such tax to appear before the court on the day specified, not more than three months from the date of such citation, and show cause why the tax should not be paid. The judge of the district court upon such application and whenever it shall appear to him that any such tax accruing under this act has not been paid as required by law, shall issue such citation, and the service of such citation and the time, manner and proof thereof, and the hearing and determination thereof, shall conform as near as may be to the provisions of the laws governing probate practice of this state, and whenever it shall appear that any such tax is due and payable, and the payment thereof cannot be enforced under the provisions of this act, in said district court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax, and it shall be the duty of the attorney general, in the name of the state, to sue for and enforce the collection of such tax, and it is made the duty of the county attorney of the county to appear for and act on behalf of any county treasurer, who shall be cited to appear before any district court under the provisions of this act.

History: En. Sec. 16, Ch. 65, L. 1923; amd. Sec. 92, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

91-4442. (10400.32) **Special administration to determine tax where transfer made in contemplation of death.** Where it appears that the estate of a deceased person subject to the inheritance tax laws was transferred in contemplation of the death of the grantor without the adjustment and payment of the inheritance taxes and no application for such adjustment

is made within six months after the demise of such grantor, the public administrator of the proper county shall notify the state department of revenue and on its order make application for and shall be entitled to such general or special administration as may be necessary for the purpose of the adjustment and payment of the inheritance taxes provided by law and shall administer such estate the same as other estates are administered as though such estate had not been transferred by the grantor.

History: En. Sec. 17, Ch. 65, L. 1923; amd. Sec. 93, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue' for "board of equalization."

91-4443. (10400.43) **Public administrator's duty to investigate concerning tax—compensation.** It shall be the duty of the public administrator, under the general supervision of the state department of revenue, and with the assistance of the county attorney, when required by the department or district judge, to investigate the estates of deceased persons within his county and to appear for and act in behalf of the county and state in the district court in such estates as the court may in its discretion deem necessary, and for such services the public administrator shall be entitled to five per cent of the gross inheritance tax as determined in each such estate, to be paid by the county treasurer out of the inheritance tax funds upon an order of the district judge, provided that the minimum fee for each such estate shall not be less than five dollars, and that it shall not exceed twenty-five dollars; but in cases of unusual difficulty, in estates of resident decedents, where the tax exceeds five hundred dollars, the district judge may allow the public administrator such additional compensation as he may deem just and reasonable.

History: En. Sec. 17, Ch. 65, L. 1923; amd. Sec. 94, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board."

91-4444. (10400.34) **State department of revenue to supervise inheritance tax.** It shall be the duty of the state department of revenue to supervise the administration of, and to investigate and cause to be investigated the administration of the inheritance tax laws, and such particular estates to which the inheritance tax laws apply throughout the various counties of the state, and to cause to be made and filed in its office reports of such investigation together with specific information and facts as to particular estates that may seem to require special consideration and attention by the legal department of the state; but no information so acquired shall, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; amd. Sec. 95, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

91-4445. (10400.35) **Powers and duties of the department.** The state department of revenue in the conduct of inheritance tax affairs, shall have

the same and similar powers and authority for gathering information and making investigations as is conferred by law on the department in the performance of its other duties. The department shall biennially report to the governor and to the legislature at the opening of the sessions the general result of its labors and investigations in inheritance tax matters during the previous biennial period, together with specific reports of the several counties where the administration of the inheritance tax laws has been lax and unsatisfactory, with such recommendations for action thereon by the legislature as may be deemed advisable and proper.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; amd. Sec. 96, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

91-4446. (10400.36) **Powers and duties in nonresident estates.** The state department of revenue shall also gather information and make investigations and reports concerning the estates of nonresident decedents within the provisions of the inheritance tax laws, and shall especially investigate the probate and other records for such probable estates without the state and report thereon from time to time to the legal department of the state and to the proper district court for appropriate legal action, but no information so acquired shall, in advance of legal action, be disclosed to anyone except proper officials, and persons interested in such estate.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; amd. Sec. 97, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

91-4447. (10400.37) **Duty of the legal department of state.** It shall be the duty of the legal department of the state to carry out and enforce the recommendations and directions of the state department of revenue in all matters pertaining to the conduct of inheritance tax affairs; and in every estate in which the amount of inheritance tax collectible shall exceed or probably exceed the sum of one thousand dollars, there shall be no compounding, composition, or settlement of the taxes under the authority conferred by section 91-4451 or otherwise, until the state department of revenue shall have investigated such estate and made a report thereon, nor until the department consents to such compounding, compromise, or settlement.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; amd. Sec. 98, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

91-4448. (10400.38) **Forms and blanks.** The state department of revenue shall prescribe such forms and prepare such blanks as may be necessary in inheritance tax proceedings; and such blanks shall be printed at the expense of the state and furnished to each district court or the clerk thereof upon the request of the judge or clerk thereof.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; amd. Sec. 99, Ch. 391, L. 1973; amd. Sec. 10, Ch. 365, L. 1974.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

The 1974 amendment deleted "in the district courts of the state" after "in inheritance tax proceedings"; and substituted "to each district court or the clerk thereof" for "to the district court."

91-4449. (10400.39) **Duties of clerks of district courts.** It shall be the duty of the clerk of the district court to furnish to the state department of revenue copies of such documents filed in connection with probate matters as the department may require.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; amd. Sec. 100, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board."

91-4450. (10400.40) **Monthly reports of county treasurer—payment of collections to state department of revenue—interest on unpaid amounts.** On or before the fifth day of each month each county treasurer shall make a report under oath to the state department of revenue listing all payments received by him under the inheritance tax laws, during the preceding month, and stating for what estate, by whom and when paid. The form of such report shall be prescribed by the state department of revenue. He shall at the same time pay the state department of revenue all the payments received by him under the inheritance tax laws and not previously paid to the state department of revenue, and for all such payments collected by him and not paid to the state department of revenue within five days from the time herein required, he shall pay interest at the rate of ten per cent (10%) per annum.

History: En. Sec. 19, Ch. 65, L. 1923; amd. Sec. 7, Ch. 150, L. 1925; amd. Sec. 2, Ch. 36, L. 1971; amd. Sec. 101, Ch. 391, L. 1973.

Amendments

The 1971 amendment substantially rewrote this section. For former text, see parent volume.

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

Effective Dates.

Section 3 of Ch. 36, Laws 1971 read "The change in reporting and remittance of payments received as provided in section 2 is effective for such payments received, or on hand, on or after April 1, 1971. The first report and remittance based on the change is due by May 5, 1971."

Section 4 of Ch. 36, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 18, 1971.

91-4451. (10400.41) **Composition and compromise.** The state department of revenue is authorized to enter into an agreement with the executor, administrator, or trustee of any estate in which remainders or expectant estates have been of such a nature or so disposed and circumstanced that the taxes therein were held not presently payable or where the interests of the legatees or devisees are not ascertainable under the provisions of this act, or whenever a tax is claimed on account of the transfer of any property of a nonresident decedent, and to compound such taxes upon such terms as may be deemed equitable and expedient and to grant discharges to said executors, administrators, or trustees upon the payment of the taxes provided for in such composition, provided, how-

ever, that no such composition shall be conclusive in favor of such executors, administrators, or trustees as against the interests of such cestui que trust as may possess either present rights of enjoyment or fixed, absolute, or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto either personally when competent or by guardian. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate and one copy shall be filed in the office of the clerk of the district court of the county in which the tax was paid; one copy to be delivered to the executors, administrators, or trustees, who shall be parties thereto, and one copy to be retained by the department of revenue.

History: En. Sec. 20, Ch. 65, L. 1923; amd. Sec. 102, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning and at the end of the section.

91-4453. (10400.43) **Definitions.** (1) The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, or vendees, and not as the property or interest therein of the decedent, grantor, donor, or vendor, and shall include all personal property within or without the state. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein prescribed to each individual or corporation. The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor. "Intangible" or "intangible property", when used in this act without other qualifications, shall be taken to include all moneys, stocks, bonds, notes, securities, and credits of all kinds, secured or unsecured. The words "county treasurer", "public administrator", and "county attorney" as used in this act shall be taken to mean the treasurer, public administrator, and county attorney of the county in which the district court has jurisdiction of the proceedings.

(2) The terms "joint" and "jointly" as used in this chapter refer to ownership of property by two or more persons having as one of the incidents of such ownership the right of survivorship in the surviving owner or owners upon the death of one of the owners. This definition does not affect the concept of property owned as tenants in common, and this type of ownership shall continue to be recognized where applicable.

History: En. Sec. 22, Ch. 65, L. 1923; amd. Sec. 7, Ch. 490, L. 1977.

Amendments

The 1977 amendment inserted the subsection (1) designation; added subsection (2); and made minor changes in punctuation.

91-4454. (10400.45) **Employment of assistants by department of revenue—compensation.** The state department of revenue may employ such

other persons as experts and assistants as may be necessary to perform the duties that may be required of the department and fix their compensation.

History: En. Sec. 24, Ch. 65, L. 1923; amd. Sec. 103, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board."

91-4455. (10400.46) **Hearings by department of revenue—witnesses—false testimony as perjury—compensation.** Oaths of witnesses in any matter under the investigation or consideration of the state department of revenue may be administered by the director of revenue or his appointed agents. In case any witness shall fail to obey any summons to appear before the department or shall refuse to testify or answer any material questions or to produce records, books, papers, or documents, when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the department or to punish witnesses for any such neglect or refusal. Any person who shall testify falsely in any material manner under the consideration of the department shall be guilty of and punished for perjury. In the discretion of the department, officers who serve summons or subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the district court.

History: En. Sec. 25, Ch. 65, L. 1923; amd. Sec. 104, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" and "director of revenue or his appointed agents" for "secretary of the board or by any member thereof" in the first sentence; and substituted "department" for "board" throughout the remainder of the section.

91-4459. (10400.51) **Checking by county clerk of records and transfers—report to department of revenue.** The county clerk, upon the receipt of the list of deaths provided for in section 91-4458, shall immediately check the records of his county to determine whether any of the deceased persons whose names appear upon such list may have made any transfer of property or of property rights within such county during the three years preceding the death of such person or whether such deceased person may have been possessed of any property in such county at the time of his death.

If he shall find that any such deceased person may have made any such transfers of property or of property rights, or have died possessed of such, he shall immediately transmit such information to the state department of revenue.

History: En. Sec. 3, Ch. 186, L. 1935; amd. Sec. 105, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

91-4460 to 91-4467. Repealed.

Repeal

Sections 91-4460 to 91-4467 (Secs. 1 to 7, Ch. 248, L. 1961; Secs. 106 to 110; Sec. 11, Ch. 365, L. 1974), relating to con-

veyances between spouses within three years of the grantor's death, inheritance tax, after-discovered property, appraisal by the state board of equalization, and the purpose and application of the act, were repealed by Sec. 5, Ch. 424, Laws 1975. Section 91-4466 was also repealed by Sec. 113, Ch. 391, Laws 1973.

91-4468. Personal representative to furnish information—department to determine tax—appeal. The personal representative, or should the personal representative fail to do so, any interested person, shall make application to the state department of revenue for determination of any tax due upon the estate of a decedent. The applicant shall furnish to the department of revenue the inventory and appraisement required by section 91A-3-706 of this act and of any supplemental inventory under section 91A-3-707 of this act together with a statement, under oath or affirmation, of any property owned by the decedent at the time of his death situated outside of this state and without its jurisdiction. The applicant shall, upon request of the department, furnish the department with the final accounting of such personal representative. If the decedent died testate, the personal representative shall likewise furnish the department with a certified copy of the last will of the decedent. If the decedent died intestate, the personal representative shall provide the department with a sworn statement setting forth the names, ages, and residences of the heirs at law of decedent. In all cases, the personal representative shall set forth the proportion of the entire estate inherited by or devised to each of said persons, and the relation, if any, which each devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made. The information so provided shall not be binding upon the department in case it believes the same to be erroneous or untrue. From the information so furnished the department and such other information as it may be able to obtain with reference thereto, the department shall, with reasonable diligence, proceed to ascertain and determine the amount of tax, if any, due under the provisions of the inheritance tax laws of the state of Montana, and a copy of such determination shall be mailed to the personal representative and to the clerk of the appropriate district court. If no tax is due, the department shall likewise so inform the clerk of district court and the personal representative. Should the personal representative or any person affected by the determination of inheritance tax feel aggrieved by the department's determination, he may, within sixty (60) days after the filing of the copy of such determination with the clerk of district court, appeal the determination to the appropriate district court, by serving upon the department his objections to such determination and by filing such notice, after so serving the same, in the office of the clerk of such court. The court shall set a day for hearing such appeal upon ten (10) days' notice to all interested parties, and at the time and place set shall hear the appeal, upon all papers and records which may be properly presented before it, and shall as soon as possible thereafter issue its order determining the amount of such inheritance tax, if it finds a tax to be due.

History: En. 91-4468 by Sec. 4, Ch. 365, L. 1974; amd. Sec. 9, Ch. 516, L. 1975.

Amendments

The 1975 amendment substituted the third sentence for a provision at the end of the second sentence which read: "and, further, shall furnish the department with the final accounting of such personal representative as provided by section 91A-

3-714 of this act"; and deleted a former third-from-last sentence which read: "Upon receipt of notice from the department of the amount of tax due or that no tax is due, the personal representative shall notify all persons having a beneficial interest in said estate as promptly as may be."

Repealing Clause

Section 10 of Ch. 516, Laws 1975 read "Sections 91A-6-103, 91A-3-714, 91A-3-715, and 91-218, R. C. M. 1947, are repealed."

91-4469. Repealed.

Repeal

Section 91-4469 (Sec. 1, Ch. 424, L. 1975), relating to determination and payment of tax where appointment of personal representative not required, was repealed by Sec. 5, Ch. 409, Laws 1977.

91-4470. Determination of inheritance tax—no personal representative. (1) For the purposes of this section, a decedent is one who dies leaving no property which requires the appointment of a personal representative and:

(a) was the owner of a life estate which terminated at his death;

(b) was the owner of property with another or others as a joint tenant with right of survivorship and not as a tenant in common; or

(c) was the owner of any other interest in property requiring the determination of inheritance tax because of his death.

(2) Upon the death of a decedent, a remainderman, surviving joint tenant, or other interested party shall file with the department of revenue:

(a) a copy of the death certificate;

(b) a verified application in a form perscribed by the department containing such information as the department considers necessary; and

(c) evidence of the instruments which created the life estate, joint tenancy, or other interest requiring determination of inheritance tax, if required by the department.

(3) Upon receipt of the application the department shall:

(a) stamp the filing date upon the application;

(b) issue a certificate showing the inheritance tax due, if any;

(c) affix the certificate to a certified copy of the application and return the same to the applicant or his attorney; and

(d) affix a copy of the certificate to the original application and keep it on file with the department.

(4) The applicant shall pay the inheritance tax determined to the county treasurer for transmittal to the state treasurer. The county treasurer shall issue a receipt for the payment of the tax.

(5) If disputes arise as to tax computation, they shall be resolved as provided under the laws applicable to the determination of inheritance taxes in estates.

History: En. 91-4470 by Sec. 1, Ch. 409, L. 1977.

Title of Act

An act to provide for the determination of inheritance tax and termination of interest in life estates, joint tenancies, and other interests; repealing sections 91-4321.1, 91-4469, and 91A-3-1205, R. C. M. 1947.

91-4471. Termination of interest in property. (1) If an interest in real property is involved under 91-4470 the applicant shall file with the clerk and recorder of each county in which the real property or any part thereof is located:

(a) a certified copy of the application referred to in subsection (2) (b) of 91-4470;

(b) the certificate from the department of revenue determining inheritance tax, if any;

(c) the receipt from the county treasurer showing the inheritance tax has been paid.

(2) The interest of the decedent in property held in joint tenancy terminates upon his death.

(3) The filing of the documents under subsection (1) constitutes release of any lien for inheritance taxes.

History: En. 91-4471 by Sec. 2, Ch. 409, L. 1977.

91-4472. Determination of inheritance tax on transfer of certain interests in estate with personal representative. (1) If a decedent dies leaving property which requires the appointment of a personal representative and was also an owner of property as described in subsection (1)(a), (1)(b), or (1)(c) of 91-4470 the remainderman, surviving joint tenant, personal representative, or other interested party may have the inheritance tax determined and the joint tenancy terminated or ownership transferred as provided in 91-4470 and 91-4471 by filing with the department:

(a) the information listed in 91-4470(2) except (2)(f); and

(b) the name of the county of administration or probate and the court file number.

History: En. 91-4472 by Sec. 3, Ch. 409, L. 1977.

91-4473. Attorney's fee. If a decedent as defined in 91-4470 leaves a surviving spouse, the surviving spouse is not required to hire an attorney to transfer title to the property involved. If an attorney is hired by the surviving spouse, the attorney's fee for services required in terminating a joint tenancy or transferring other types of ownership listed in 91-4470 may not exceed 2% of the value of the interest passing to the spouse.

History: En. 91-4473 by Sec. 4, Ch. 409, L. 1977.

Repealing Clause

Section 5 of Ch. 409, Laws 1977 read "Sections 91-4321.1, 91-4469, and 91A-3-1205, R. C. M. 1947, are repealed."

CHAPTER 45—GUARDIAN AND WARD

91-4501 to 91-4508. (5868 to 5875) **Repealed.**

Repeal

Sections 91-4501 to 91-4508 (Secs. 409 to 416, pp. 345, 346, L. 1877), relating to the definition and appointment of a guardian, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-4510 to 91-4518. (5877 to 5881) **Repealed.**

Repeal

Sections 91-4510 to 91-4518 (Secs. 418 to 422, pp. 346, 347, L. 1877; Secs. 1 to 4, Ch. 21, L. 1933), relating to jurisdiction and transfer of guardianship proceedings, rules for awarding custody, and the duties of a guardian, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-4519, 91-4520. (5882, 5883) **Repealed.**

Repeal

Sections 91-4519, 91-4520 (Secs. 423, 424, pp. 347, 348, L. 1877), relating to the fiduciary nature of the guardian-ward relationship, and to the authority of the court over the guardian, were repealed by Sec. 15, Ch. 263, Laws 1975.

91-4522 to 91-4525. (5885 to 5888) **Repealed.**

Repeal

Sections 91-4522 to 91-4525 (Secs. 426 to 429, p. 348, L. 1877), relating to removal, superseding, and release of a guardian, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-4526. (5889) **Repealed.**

Repeal

Section 91-4516 (Sec. 430, p. 348, L. 1877), relating to the discharge of a guardian, was repealed by Sec. 15, Ch. 263, Laws 1975.

CHAPTER 46—GUARDIANS OF MINORS

(Repealed—Section 2, Chapter 365, Laws of 1974; Section 15, Chapter 263, Laws of 1975)

91-4601 to 91-4604. (10401 to 10404) **Repealed.**

Repeal

Sections 91-4601 to 91-4604 (Secs. 351 to 354, p. 351, L. 1877), relating to the petition for appointment of a guardian, and the nomination of the guardian by a minor, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-4605. (10405) **Repealed.**

Repeal

Section 91-4605 (Sec. 355, p. 332, L. 1877), relating to the right of a parent to the guardianship of his or her own child, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-4606 to 91-4608. (10406 to 10408) **Repealed.**

Repeal

Sections 91-4606 to 91-4608 (Secs. 356 to 358, p. 332, L. 1877), relating to the powers and duties and bond of a guardian, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-4609. (10409) **Repealed.**

Repeal

Section 91-4609 (Sec. 361, p. 333, L. 1877), relating to the maintenance of a minor out of the income from the minor's property, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-4610, 91-4611. (10410, 10411) **Repealed.**

Repeal

Sections 91-4610, 91-4611 (Secs. 362, 363, p. 333, L. 1877), relating to qualification of a testamentary guardian and the power of the court to appoint a guardian ad litem, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 47—GUARDIANS OF INSANE AND INCOMPETENT PERSONS

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-4701 to 91-4706. (10412 to 10416.1) Repealed.

Repeal

Sections 91-4701 to 91-4706 (Secs. 364 to 366, p. 334, L. 1877; Secs. 2970 to 2974, C. Civ. Proc. 1895; Sec. 1, Ch. 79, L. 1935; Secs. 1, 2, Ch. 19, L. 1937; Sec. 1, Ch. 34, L. 1953), relating to appointment of guardians for insane and incompetent persons, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 48—GUARDIANSHIP OF INCOMPETENT VETERANS, MINORS, AND OTHER BENEFICIARIES OF THE VETERANS ADMINISTRATION

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-4801 to 91-4822. Repealed.

Repeal

Sections 91-4801 to 91-4822 (Secs. 1 to 23, Ch. 58, L. 1943; Sec. 1, Ch. 24, L. 1955), relating to guardianship of incompetent veterans and beneficiaries of the Veterans' Administration, and officially cited as the "Uniform Veterans' Guardianship Act," were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 49—GUARDIAN'S POWERS AND DUTIES

91-4901 to 91-4904. (10417 to 10420) Repealed.

Repeal

Sections 91-4901 to 91-4904 (Secs. 367 to 370, pp. 335, 336, L. 1877), relating to powers and duties of a guardian in regard to the estate of the ward, and the support and education of the ward, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-4905. (10421) Repealed.

Repeal

Section 91-4905 (Sec. 371, p. 336, L. 1877), relating to partition of the real estate of the ward, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-4906, 91-4907. (10422, 10423) Repealed.

Repeal

Sections 91-4906, 91-4907 (Secs. 272, 273, pp. 336, 337, L. 1877; Sec. 1, Ch. 3, L. 1947), relating to return of estate to ward and settlement of the guardian's account, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-4909 to 91-4911. (10425 to 10427) Repealed.

Repeal

Sections 91-4909 to 91-4911 (Sec. 375, p. 337, L. 1877; Sec. 1, Ch. 48, L. 1905; Secs. 1, 2, Ch. 59, L. 1921; Sec. 1, Ch. 20, L. 1947; Sec. 1, Ch. 225, L. 1955), relating to expenses and compensation of guardian, and to the mortgage or lease of the ward's property, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 50—SALE OF PROPERTY BY GUARDIANS—INVESTMENT OF PROCEEDS

(Repealed—Section 2, Chapter 365, Laws of 1974; Section 15, Chapter 263, Laws of 1975)

91-5001 to 91-5007. (10428 to 10434) Repealed.

Repeal

Sections 91-5001 to 91-5007 (Secs. 376 to 382, pp. 337, 338, L. 1877; Sec. 1, Ch. 73, L. 1927; Sec. 1, Ch. 19, L. 1947), relating to sale of the property of the ward, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-5008 to 91-5016. (10435 to 10443) Repealed.

Repeal

Sections 91-5008 to 91-5016 (Secs. 383 to 391, pp. 338 to 340, L. 1877; Sec. 1, Ch. 6, L. 1947; Sec. 1, Ch. 27, L. 1969), relating to court-ordered sale of the property of a ward, were repealed by Sec. 15, Ch. 263, Laws 1975.

CHAPTER 51—GUARDIANSHIP OF NONRESIDENTS

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-5101 to 91-5111. (10444 to 10454) Repealed.

Repeal

Sections 91-5101 to 91-5111 (Secs. 392 to 398, pp. 341, 342, L. 1877; Secs. 392 to 397, 2nd Div. Comp. Stat. 1887), relating to guardianship of nonresident persons, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

CHAPTER 52—GUARDIANSHIP—GENERAL AND MISCELLANEOUS PROVISIONS

91-5201. (10455) Repealed.

Repeal

Section 91-5201 (Sec. 399, p. 343, L. 1877), relating to examination of persons suspected of defrauding wards or concealing property of the ward, was repealed by Sec. 15, Ch. 263, Laws 1975.

91-5202, 91-5203. (10456, 10457) Repealed.

Repeal

Sections 91-5202, 91-5203 (Secs. 400, 401, p. 343, L. 1877), relating to removal or resignation of guardian and termination of the guardianship, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-5204, 91-5205. (10458) Repealed.

Repeal

Sections 91-5204, 91-5205 (Sec. 402, p. 343, L. 1877; Sec. 1, Ch. 76, L. 1937), relating to issuance of letters of guardianship without bond, and to requiring a new bond for a guardian, were repealed by Sec. 15, Ch. 263, Laws 1975.

91-5210. (10463) Repealed.

Repeal

Section 91-5210 (Sec. 3058, C. Civ. Proc. 1895; Sec. 1, Ch. 8, L. 1947), relating to the entering of guardianship orders into the minutes of the court, was repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

91-5211. (10464) **Repealed.**

Repeal

Section 91-5211 (Sec. 3059, C. Civ. Proc. 1895), relating to the applicability of section 93-8709 to the right of a guardian to recover against his surety, was repealed by Sec. 15, Ch. 263, Laws 1975.

CHAPTER 53—PROCEEDINGS IN LIEU OF PROBATE—ESTATES OF LESS THAN TEN THOUSAND DOLLARS

(Repealed—Section 2, Chapter 365, Laws of 1974)

91-5301 to 91-5312. Repealed.

Repeal

Sections 91-5301 to 91-5312 (Secs. 1 to 12, Ch. 51, L. 1969; Secs. 1 to 5, Ch. 223, L. 1973), relating to proceedings in lieu of probate for estates of less than ten thousand dollars, were repealed by Sec. 2, Ch. 365, Laws 1974, effective July 1, 1975.

NOV 2 1977

30
47
2
5,pt.2
p.

MONTANA UNIFORM PROBATE CODE

TITLE 91A

1947 REVISED CODES OF MONTANA

MONTANA
STATE LAW LIBRARY

Containing

TITLE 91A, REVISED CODES OF MONTANA,
THE MONTANA UNIFORM PROBATE CODE, AS
ENACTED BY CHAPTER 365
LAWS OF 1974, AND AS AMENDED THROUGH THE 45th
LEGISLATURE IN 1977

THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202

MONTANA UNIFORM PROBATE CODE

TITLE 91A

1947 REVISED CODES OF MONTANA

Containing

TITLE 91A, REVISED CODES OF MONTANA,
THE MONTANA UNIFORM PROBATE CODE, AS
ENACTED BY CHAPTER 365
LAWS OF 1974, AND AS AMENDED THROUGH THE 45th
LEGISLATURE IN 1977

THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202



Copyright © 1974, 1976 by
The Allen Smith Company
Indianapolis, Indiana

Copyright © 1977 by
The Allen Smith Company
Indianapolis, Indiana

FOREWORD

This pamphlet contains the complete text of the Uniform Probate Code adopted by Chapter 365, Laws of 1974, effective July 1, 1975, as amended through the 1977 Session of the Legislature.

Various portions of this Uniform Probate Code, designated as Title 91A, either embody, supersede or conflict with statutes now contained principally in Title 91 of the Revised Codes of Montana. The Repealing Clause of Chapter 365 is set forth following section 91A-6-104.

Included in this pamphlet as notes following most of the sections of the Uniform Probate Code are the Official Comments prepared by the Joint Editorial Board for the Uniform Probate Code, an arm of the National Conference of Commissioners on Uniform Probate Code. The Comments have been edited occasionally for adaptation to the Montana version of the Uniform Code.

The Index to the Uniform Probate Code prepared by its Joint Editoral Board, modified in substance as required by variations in the Montana adoption, appears at the end of this pamphlet.

TITLE 91A

UNIFORM PROBATE CODE

Chapter

1. General provisions, definitions, and probate jurisdiction of court.
   - Part 1. Short title, construction, general provisions, 91A-1-101 to 91A-1-108.
   - 2. Definitions, 91A-1-201.
   - 3. Scope, jurisdiction and courts, 91A-1-301 to 91A-1-309.
   - 4. Notice, parties and representation in estate litigation and other matters, 91A-1-401 to 91A-1-403.
2. Intestate succession and wills.
   - Part 1. Intestate succession, 91A-2-101 to 91A-2-111.1, 91A-2-112.
   - 2. Elective share of surviving spouse, 91A-2-201 to 91A-2-207.
   - 3. Spouse and children unprovided for in wills, 91A-2-301, 91A-2-302.
   - 4. Exempt property and allowances, 91A-2-401 to 91A-2-405.
   - 5. Wills, 91A-2-501 to 91A-2-513.
   - 6. Rules of construction, 91A-2-601 to 91A-2-612.
   - 7. Contractual arrangements relating to death, 91A-2-701.
   - 8. General provisions, 91A-2-801 to 91A-2-803.
   - 9. Custody and deposit of wills, 91A-2-901, 91A-2-902.
3. Probate of wills and administration.
   - Part 1. General provisions, 91A-3-101 to 91A-3-109.
   - 2. Venue for probate and administration—priority to administer—demand for notice, 91A-3-201 to 91A-3-204.
   - 3. Informal probate and appointment proceedings, 91A-3-301 to 91A-3-311.
   - 4. Formal testacy and appointment proceedings, 91A-3-401 to 91A-3-414.
   - 5. Supervised administration, 91A-3-501 to 91A-3-505.
   - 6. Personal representative—appointment, control and termination of authority, 91A-3-601 to 91A-3-618.
   - 7. Duties and powers of personal representatives, 91A-3-701 to 91A-3-713, 91A-3-715.1 to 91A-3-722.
   - 8. Creditors' claims, 91A-3-801 to 91A-3-816.
   - 9. Special provisions relating to distribution, 91A-3-901 to 91A-3-916.
   - 10. Closing estates, 91A-3-1001 to 91A-3-1012.
   - 11. Compromise of controversies, 91A-3-1101, 91A-3-1102.
   - 12. Procedure for collection of personal property by affidavit, termination of joint tenancies and life estates, and summary administration procedure for small estates, 91A-3-1201 to 91A-3-1204.
4. Foreign personal representatives—ancillary administration.
   - Part 1. Definitions, 91A-4-101.
   - 2. Powers of foreign personal representatives, 91A-4-201 to 91A-4-209.
   - 3. Jurisdiction over foreign representatives, 91A-4-301 to 91A-4-303.
   - 4. Judgments and personal representative, 91A-4-401.
5. Protection of persons under disability and their property.
   - Part 1. General provisions, 91A-5-101 to 91A-5-104.
   - 2. Guardians of minors, 91A-5-201 to 91A-5-212.
   - 3. Guardians of incapacitated persons, 91A-5-301 to 91A-5-314.
   - 4. Protection of property of persons under disability and minors, 91A-5-401 to 91A-5-431.
   - 5. Powers of attorney, 91A-5-501, 91A-5-502.
6. General provisions, 91A-6-101, 91A-6-102, 91A-6-104.

CHAPTER 1

GENERAL PROVISIONS, DEFINITIONS, AND PROBATE JURISDICTION OF COURT

Part

1. Short title, construction, general provisions, 91A-1-101 to 91A-1-108.
2. Definitions, 91A-1-201.

3. Scope, jurisdiction and courts, 91A-1-301 to 91A-1-309.
4. Notice, parties and representation in estate litigation and other matters, 91A-1-401 to 91A-1-403.

Part 1—Short Title, Construction, General Provisions

Section
91A-1-101. Short title.
91A-1-102. Purposes—rules of construction.
91A-1-103. Supplementary general principles of law applicable.
91A-1-104. Severability.
91A-1-105. Construction against implied repeal.
91A-1-106. Effect of fraud and evasion.
91A-1-107. Evidence as to death or status.
91A-1-108. Acts by holder of general power.

91A-1-101. Short title. This act shall be known and may be cited as the Uniform Probate Code.

History: En. 91A-1-101 by Sec. 1, Ch. 365, L. 1974.

Title of Act

An act to be known as the "Uniform Probate Code" relating to affairs of decedents, missing persons, protected persons, minors, incapacitated persons and certain others; consolidating and revising the law relating to wills and intestacy and the administration and distribution of estates of decedents, missing persons, protected persons, minors, incapacitated persons and certain others; ordering the powers and procedures of the court concerned with the affairs of decedents and certain others; providing for the termination of joint tenancies and life estates; repealing sections 22-101 through 22-117, 91-101, 91-102, 91-107, 91-108, 91-113 through 91-116, 91-122, 91-125 through 91-130, 91-135 through 91-139, 91-141, 91-201, 91-210, 91-214 through 91-217, 91-227, 91-235, 91-301, 91-303, 91-304, 91-307, 91-308, 91-311 through 91-314, 91-317, 91-319, 91-321, 91-402 through 91-405, 91-411 through 91-418, 91-423 through 91-430, 91-520 through 91-522, 91-612A, 91-612B, 91-701, 91-702, 91-801 through 91-811, 91-901, 91-904, 91-1001 through 91-1003, 91-1101 through 91-1105, 91-1107, 91-1301 through 91-1303, 91-1305 through 91-1312, 91-1401, 91-1402, 91-1404 through 91-1406, 91-1501 through 91-1509, 91-1601 through 91-1604, 91-1701 through 91-1723, 91-1801 through 91-1807, 91-1901 through 91-1906, 91-2002 through 91-2004, 91-2101 through 91-2105, 91-2201 through 91-2204, 91-2207 through 91-2213, 91-2401 through 91-2407, 91-2501 through 91-2507, 91-2601 through 91-2612, 91-2701 through 91-2705, 91-2707 through 91-2712, 91-2715 through 91-2720, 91-2723, 91-2724, 91-2801 through 91-2810, 91-2901, 91-2902, 91-3001 through 91-3039, 91-3101 through 91-3109, 91-3201 through 91-3204, 91-3209 through 91-3212, 91-3301 through 91-3313, 91-3405, 91-3407, 91-3601 through 91-3608, 91-3701 through 91-3706, 91-3801 through 91-3803, 91-3901 through 91-3907, 91-4001 through 91-4012, 91-4101 through 91-4106, 91-4311, 91-4314 through 91-4316, 91-4321, 91-4322, 91-4501 through 91-4508, 91-4510 through 91-4518, 91-4522 through 91-4525, 91-4601 through 91-4604, 91-4606 through 91-4608, 91-4610, 91-4611, 91-4701 through 91-4706, 91-4801 through 91-4822, 91-4901 through 91-4904, 91-4906, 91-4907, 91-4909 through 91-4911, 91-5001 through 91-5007, 91-5101 through 91-5111, 91-5202, 91-5203, 91-5210, 91-5301 through 91-5312, and 93-1404.4, R. C. M. 1947; and amending sections 91-131, 91-218, 91-612, 91-1106, 91-3406, 91-4411, 91-4417, 91-4423, 91-4430, 91-4437, 91-4438, 91-4448, and 91-4467, R. C. M. 1947; and providing an effective date.

91A-1-102. Purposes—rules of construction. (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this code are:

(a) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;

(b) to discover and make effective the intent of a decedent in distribution of his property;

(c) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to its successors;

(d) to make uniform the law among the various jurisdictions.

History: En. 91A-1-102 by Sec. 1, Ch. 365, L. 1974.

91A-1-103. Supplementary general principles of law applicable. Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

History: En. 91A-1-103 by Sec. 1, Ch. 365, L. 1974.

91A-1-104. Severability. If any provision of this code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

History: En. 91A-1-104 by Sec. 1, Ch. 365, L. 1974.

91A-1-105. Construction against implied repeal. This code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

History: En. 91A-1-105 by Sec. 1, Ch. 365, L. 1974.

91A-1-106. Effect of fraud and evasion. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief including restitution against the perpetrator of the fraud or any person benefiting from the fraud, whether innocent or not (other than a bona fide purchaser for value and without notice). Any proceeding must be commenced within two (2) years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five (5) years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

History: En. 91A-1-106 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This is an overriding provision that provides an exception to the procedures and limitations provided in the code. The remedy of a party wronged by fraud is intended to be supplementary to other protections provided in the code and can be maintained outside the process of settlement of the estate. Thus, if a will which is known to be forgery is probated informally, and the forgery is not discovered until after the period for contest has run, the defrauded heirs still could bring a fraud action under this section. Or if a will is fraudulently concealed after the testator's death and its existence not discovered until after the basic three-year period (section [91A-3-108]) has elapsed, there still may be an action under this section. Similarly, a closing statement normally provides binding protection for the personal representative after six months from filing (section [91A-3-1006]). However, if there is fraudulent misrepresentation or concealment in

the preparation of the claim, a later suit may be brought under this section against the personal representative for damages; or restitution may be obtained from those distributees who benefit by the fraud. In any case innocent purchasers for value are protected.

Any action under this section is subject to usual rules of res judicata; thus, if a forged will has been informally probated, an heir discovers the forgery, and then there is a formal proceeding under section [91A-3-1001] of which the heir is given notice, followed by an order of complete settlement of the estate, the heir could not bring a subsequent action under section [91A-1-106] but would be bound by the litigation in which the issue could have been raised.

The usual rules for securing relief for fraud on a court would govern, however.

The final limitation in this section is designed to protect innocent distributees after a reasonable period of time. There is no limit (other than the two years from discovery of the fraud) against the wrongdoer. But there ought to be some limit after which innocent persons who have built up expectations in good faith cannot be deprived of the property by a restitution action.

The time of "discovery" of a fraud is a fact question to be determined in the individual case. In some situations persons may not actually know that a fraud has been perpetrated but have such strong suspicion and evidence that a court may conclude there has been a discovery of the fraud at that stage. On the other hand there is no duty to exercise reasonable care to discover fraud; the burden should not be on the heirs and devisees to check on the honesty of the other interested persons or the fiduciary.

91A-1-107. Evidence as to death or status. In proceedings under this code the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by the code. In addition, the following rules relating to determination of death and status are applicable:

(1) a certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;

(2) a certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

(3) a person who is absent for a continuous period of seven (7) years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

History: En. 91A-1-107 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The Montana enactment substitutes "period of seven (7) years" for "period of five (5) years" in subdivision (3).

Editorial Board Comment

Subsection (3) is inconsistent with section 1 of Uniform Absence as Evidence of Death and Absentees' Property Act (1938).

Proceedings to secure protection of property interests of an absent person may be commenced as provided in [section 91A-5-401].

The preliminary paragraph is designed to accommodate the Uniform Simultaneous Death Act, if it is a part of a state's law. [The Uniform Simultaneous Death Act, Sections 91-423 to 91-430, is repealed effective July 1, 1975.]

91A-1-108. Acts by holder of general power. For the purpose of granting consent or approval with regard to the acts or accounts of a

personal representative, including relief from liability or penalty for failure to post bond, or to perform other duties the sole holder or all coholders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

History: En. 91A-1-108 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The status of a holder of a general power in estate litigation is dealt with by section [91A-1-403].

This section permits the settlor of a revocable trust to prevent the trustee from registering the trust so long as the power of revocation continues.

"General power," as used in this section, is intended to refer to the common-law concept, rather than to tax or other statutory meanings. A general power, as used herein, is one which enables the power holder to draw absolute ownership to himself.

Part 2—Definitions

Section
91A-1-201. General definitions.

91A-1-201. General definitions. Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in this code:

(1) "Application" means a written request to the clerk for an order of informal probate or appointment under sections 91A-3-301 through 91A-3-309, inclusive.

(2) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(3) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved.

(4) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(5) "Clerk" or "clerk of court" means the clerk of the district court.

(6) "Court" means the court having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as district court.

(7) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(8) "Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

(9) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(10) "Disability" means cause for a protective order as described by section 91A-5-401.

(11) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(12) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this code as originally constituted and as it exists from time to time during administration.

(13) "Exempt property" means that property of a decedent's estate which is described in section 91A-2-402.

(14) "Fiduciary" includes personal representative, guardian, conservator and trustee.

(15) "Foreign personal representative" means a personal representative of another jurisdiction.

(16) "Formal proceedings" means those conducted before a judge with notice to interested persons.

(17) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(18) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(19) "Incapacitated person" is as defined in section 91A-5-101.

(20) "Informal proceedings" mean those conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(21) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(22) "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.

(23) "Lease" includes an oil, gas, coal or other mineral lease.

(24) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(25) "Minor" means a person who is under eighteen (18) years of age.

(26) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

(27) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal entity.

(29) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question.

(30) "Person" means an individual, a corporation, an organization, or other legal entity.

(31) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(32) "Petition" means a written request to the court for an order after notice.

(33) "Proceeding" includes action at law and suit in equity.

(34) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(35) "Protected person" is as defined in section 91A-5-101.

(36) "Protective proceeding" is as defined in section 91A-5-101.

(37) "Securities" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(38) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing.

(39) "Special administrator" means a personal representative as described by sections 91A-3-614 through 91A-3-618.

(40) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(41) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(42) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his will or this code.

(43) "Supervised administration" refers to the proceedings described in sections 91A-3-501 through 91A-3-505 inclusive.

(44) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(45) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, custodial arrangements pursuant to Title 67, chapter 18, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(46) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(47) "Ward" is as defined in section 91A-5-101.

(48) "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

History: En. 91A-1-201 by Sec. 1, Ch. 335, L. 1974.

Compiler's Notes

The Montana enactment substituted the definition of "Clerk" or "clerk of court" in subdivision (5) for a definition of "Registrar"; deleted "trust accounts as defined in Article VI" after "personal representatives" in the second sentence of subdivision (45); and made minor changes in phraseology.

Articles VI and VII, referred to in the Comment were omitted from the Montana enactment.

Editorial Board Comment

Additional sections with special definitions for [Chapter 5] and [Article] VI are [91A-5-101] and 6-101. Except as controlled by special definitions applicable to [chapter 5], the definitions in [91A-1-201] apply to the entire code.

The definition of "trust" and the use of the term in Article VII eliminate procedural distinctions between testamentary and inter vivos trusts. Article VII does not deal with questions of substantive validity of trusts where a difference between inter vivos and testamentary trusts will continue to be important.

The exclusions from the definition of "trust" are modeled basically after those in section 1, Uniform Trustees' Powers Act. The exclusions in the act for "a trust created in deposits in any financial institution, or other trust the nature of which does not admit of general trust administration" are omitted above. The first of these is inappropriate because of Article VI's treatment of "Totten Trusts." Moreover, the probate court remedies and procedures being established by Article VII would seem suitable to unclassified trustee-beneficiary relationships that are in the nature of express trusts. Perhaps many controversies involving "hold and deliver" trusts or other dubious arrangements will involve the issue of whether there is a trust, but there would seem to be no harm in conferring jurisdiction on the probate court for these controversies.

The meanings of "child," "issue" and "parent" are related to section [91A-2 109].

See Comment, section 7-101, concerning the definition of "trustee."

* * *

Part 3—Scope, Jurisdiction and Courts

Section
91A-1-301. Territorial application.
91A-1-302. Subject matter jurisdiction.
91A-1-303. Venue—multiple proceedings—transfer.
91A-1-304. Practice in court.
91A-1-305. Records and certified copies.
91A-1-306. Jury trial.
91A-1-307. Clerk of court—powers.
91A-1-308. Appeals.
91A-1-309. Oath or affirmation on filed documents.

91A-1-301. Territorial application. Except as otherwise provided in this code, this code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected in this state,

(2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state, and

(3) incapacitated persons and minors in this state.

History: En. 91A-1-301 by Sec. 1, Ch. 365, L. 1974.

91A-1-302. Subject matter jurisdiction. (1) To the full extent permitted by the constitution, the court has jurisdiction over all subject matter relating to

(a) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; and

(b) protection of minors and incapacitated persons.

(2) The court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

History: En. 91A-1-302 by Sec. 1, Ch. 365, L. 1974.

91A-1-303. Venue—multiple proceedings—transfer. (1) Where venue for a proceeding under this code may lie in more than one county in the state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(2) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one (1) court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(3) If a court finds that as a matter of law or in the interest of justice a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

History: En. 91A-1-303 by Sec. 1, Ch. 365, L. 1974.

91A-1-304. Practice in court. Unless specifically provided to the contrary in this code or unless inconsistent with its provisions, the rules of civil procedure including the rules concerning vacation of orders and appellate review govern formal proceedings under this code.

History: En. 91A-1-304 by Sec. 1, Ch. 365, L. 1974.

91A-1-305. Records and certified copies. The clerk of court shall keep a record for each decedent, ward, protected person or trust involved in any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the clerk or court, and establish and maintain a system for indexing, filing or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

History: En. 91A-1-305 by Sec. 1, Ch. 365, L. 1974.

91A-1-306. Jury trial. (1) If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding, a formal proceeding for determination of heirship and any other proceeding as may be provided for by law.

(2) If there is no right to trial by jury under subsection (1) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

History: En. 91A-1-306 by Sec. 1, Ch. 365, L. 1974.

91A-1-307. Clerk of court—powers. The acts and orders which this code specifies as performable by the clerk of court may be performed either by a judge of the court or by the clerk of court.

History: En. 91A-1-307 by Sec. 1, Ch. 365, L. 1974.

91A-1-308. Appeals. Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments and power of the appellate court, is governed by the statutes and rules applicable to the appeals to the Supreme Court.

History: En. 91A-1-308 by Sec. 1, Ch. 365, L. 1974.

91A-1-309. Oath or affirmation on filed documents. Except as otherwise specifically provided in this code or by rule, every document filed with the court under this code including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to

the effect that its representations are true as far as the person executing or filing it knows or is informed; deliberate falsification therein shall constitute the offense of false swearing.

History: En. 91A-1-309 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as adopted by the National Conference of Commissioners is designated as section 1-310; the Montana enactment omitted section 1-309 of the Uniform Probate Code pertaining to qualifications of a judge of the court.

Part 4—Notice, Parties and Representation in Estate Litigation and Other Matters

Section
91A-1-401. Notice—method and time of giving.
91A-1-402. Notice—waiver.
91A-1-403. Pleadings—when parties bound by others—notice.

91A-1-401. Notice—Method and time of giving. (1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(a) by mailing a copy thereof at least fourteen (14) days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post-office address given in his demand for notice, if any, or at his office or place of residence, if known;

(b) by delivering a copy thereof to the person being notified personally at least fourteen (14) days before the time set for the hearing; or

(c) if the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing in a weekly paper once a week for three (3) consecutive weeks, and if in a newspaper published more often than once a week, by publishing on at least three (3) different days of publication and it shall be so published that there must be at least ten (10) days from the first to the last day of publication, both the first and last day being included.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

History: En. 91A-1-401 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 516, L. 1975.

Amendments

The 1975 amendment, in subdivision (1)(c), substituted "by publishing in a weekly paper once a week" for "by publishing at least once a week"; and substituted "and if any newspaper published more often than once a week * * * both the first and last day being included" at the end of the subdivision for "a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least (10) days before the time set for the hearing."

91A-1-402. Notice—waiver. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding.

History: En. 91A-1-402 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The subject of appearance is covered by section [91A-1-304].

91A-1-403. Pleadings—when parties bound by others—notice. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

(1) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(b) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his minor child.

(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(a) Notice as prescribed by section 91A-1-401 shall be given to every interested person or to one who can bind an interested person as described in (2)(a) or (2)(b) above. Notice may be given both to a person and to another who may bind him.

(b) Notice is given to unborn or unascertained persons, who are not represented under (2)(a) or (2)(b) above, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

History: En. 91A-1-403 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

A general power, as used here and in section [91A-1-108], is one which enables the power holder to draw absolute ownership to himself. The section assumes a valid general power. If the validity of the power itself were in issue, the power holder could not represent others, as for example, the takers in default.

The general rules of civil procedure are applicable where not replaced by specific provision, see section [91A-1-304]. Those rules would determine the mode of giving notice or serving process on a minor or the mode of notice in class suits involving large groups of persons made party to a suit.

CHAPTER 2

INTESTATE SUCCESSION AND WILLS

Part
1. Intestate succession, 91A-2-101 to 91A-2-111.1, 91A-2-112.
2. Elective share of surviving spouse, 91A-2-201 to 91A-2-207.
3. Spouse and children unprovided for in wills, 91A-2-301, 91A-2-302.
4. Exempt property and allowances, 91A-2-401 to 91A-2-405.
5. Wills, 91A-2-501 to 91A-2-513.
6. Rules of construction, 91A-2-601 to 91A-2-612.
7. Contractual arrangements relating to death, 91A-2-701.
8. General provisions, 91A-2-801 to 91A-2-803.
9. Custody and deposit of wills, 91A-2-901, 91A-2-902.

Part 1—Intestate Succession

Section
91A-2-101. Intestate estate.
91A-2-102. Share of spouse.
91A-2-103. Share of heirs other than surviving spouse.
91A-2-104. Requirement that heir survive decedent for one hundred twenty (120) hours.
91A-2-105. No taker.
91A-2-106. Representation.
91A-2-107. Kindred of half blood.
91A-2-108. Afterborn heirs.
91A-2-109. Meaning of child and related terms.
91A-2-110. Advancements.
91A-2-111. Alienage.
91A-2-111.1. Duties of personal representatives and special administrators in estates involving alien heirs.
91A-2-112. Dower and curtesy abolished.

EDITORIAL BOARD COMMENT

Part 1 of [Chapter 2] contains the basic pattern of intestate succession historically called descent and distribution. It is no longer meaningful to have different patterns for real and personal property, and under the proposed statute all property not disposed of by a decedent's will passes to his heirs in the same manner. The existing statutes on descent and distribution in the United States vary from state to state. The most common pattern for the immediate family retains the imprint of history, giving the widow a third of realty (sometimes only for life by her dower right) and a third of the personalty, with the balance passing to issue. Where the decedent is survived by no issue, but leaves a spouse and collateral blood relatives, there is wide variation in disposition of the intestate estate, some states giving all to the surviving spouse, some giving substantial shares to the blood relatives. The code attempts to reflect the normal desire of the owner of wealth as to disposition of his property at death, and for this purpose the prevailing patterns in wills are useful in determining what the owner who fails to execute a will would probably want.

A principal purpose of this [chapter] and [Chapter 3] of the code is to provide suitable rules and procedures for the person of modest means who relies on the estate plan provided by law. For a discussion of this important aspect of the code, see 3 Real Property, Probate and Trust Journal (Fall 1968) p. 199.

The principal features of Part 1 are:

(1) A larger share is given to the surviving spouse, if there are issue, and the whole estate if there are no issue or parent.

(2) Inheritance by collateral relatives is limited to grandparents and those descended from grandparents. This simplifies proof of heirship and eliminates will contests by remote relatives.

(3) An heir must survive the decedent for five days in order to take under the statute. This is an extension of the reasoning behind the Uniform Simultaneous Death Act and is similar to provisions found in many wills.

(4) Adopted children are treated as children of the adopting parents for all inheritance purposes and cease to be children of natural parents; this reflects modern policy of recent statutes and court decisions.

(5) In an era when inter vivos gifts are frequently made within the family, it is unrealistic to preserve concepts of advancement developed when such gifts were rare. The statute provides that gifts during lifetime are not advancements unless declared or acknowledged in writing.

While the prescribed patterns may strike some as rules of law which may in some cases defeat intent of a decedent, this is true of every statute of this type. In assessing the changes it must therefore be borne in mind that the decedent may always choose a different rule by executing a will.

91A-2-101. Intestate estate. Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this code.

History: En. 91A-2-101 by Sec. 1, Ch. 365, L. 1974.

91A-2-102. Share of spouse. The intestate share of the surviving spouse is:

(1) if there is no surviving issue or if there are surviving issue all of whom are issue of the surviving spouse also, the entire remaining estate;

(2) if there are surviving issue one (1) or more of whom are not issue of the surviving spouse, as follows:

(a) if there is surviving only one (1) such child, or the issue of one (1) such child, one-half (½) of the intestate estate;

(b) if there are surviving more than one (1) such child, or one (1) such child and the issue of one (1) or more deceased children, one-third (⅓) of the intestate estate.

History: En. 91A-2-102 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 363, L. 1975.

Compiler's Notes

The Montana enactment omitted a subdivision reading as follows: "if there is no surviving issue but the decedent is survived by a parent or parents, the first [$50,000] plus one-half of the balance of the intestate estate."

Editorial Board Comment

This section gives the surviving spouse a larger share than most existing statutes on descent and distribution. In doing so, it reflects the desires of most married persons, who almost always leave all of a moderate estate or at least one-half of a larger estate to the surviving spouse when a will is executed. A husband or wife who desires to leave the surviving spouse less than the share provided by this section may do so by executing a will, subject of course to possible election by the surviving spouse to take an elective share of one-third under Part 2 of this [chapter]. Moreover, in the small estate (less than $50,000 after homestead allowance, exempt property, and allowances) the surviving spouse is given the entire estate if there are only children who are issue of both the decedent and the surviving spouse; the result is to avoid protective proceedings as to property otherwise passing to their minor children.

See section [91A-2-802] for the definition of spouse which controls for purposes of intestate succession.

Amendments

The 1975 amendment inserted "or if there are surviving issue all of whom are issue of the surviving spouse also" in subsection (1); substituted "entire remaining estate" in subsection (1) for "entire intestate estate"; deleted former subsection (2) which read: "if there are surviving issue all of whom are issue of the surviving spouse also, the first fifty thousand dollars ($50,000), plus one-half (½) of the balance of the intestate estate"; and substituted present subsection (2) and subdivisions (2)(a) and (b) for former subsection (3) which read: "if there are surviving issue one (1) or more of whom are not issue of the surviving spouse, one-half (½) of the intestate estate."

91A-2-103. Share of heirs other than surviving spouse. The part of the intestate estate not passing to the surviving spouse under section 91A-2-102, or the entire intestate estate if there is no surviving spouse, passes as follows:

(1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;

(2) if there are surviving several children, or one (1) child, and the issue of one (1) or more children, and any such surviving child dies under age, and not having been married, all the estate that came to such deceased child by inheritance from the decedent, in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by representation; and if, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, to the issue of all other children of the same parent; and if all the issue are in the same degree of kinship to such child, they take equally, but if of unequal degree then those of more remote degree take by representation;

(3) if there is no surviving issue, to his parent or parents equally;

(4) if there is no surviving issue or parent, to the brothers and sisters and the children or grandchildren of any deceased brother or sister, by representation;

(5) if there is no surviving issue, parent, brother, sister, or children or grandchildren of a deceased brother or sister, to the next of kin, in equal degree, except that where there are two (2) or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearer ancestors must be preferred to those claiming through an ancestor more remote.

History: En. 91A-2-103 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 363, L. 1975.

Compiler's Notes

Subdivision (5) of this section is not part of the corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners.

Editorial Board Comment

This section provides for inheritance by lineal descendants of the decedent, parents and their descendants, and grandparents and collateral relatives descended from grandparents; in line with modern policy, it eliminates more remote relatives tracing through great-grandparents.

In general the principle of representation (which is defined in section [91A-2-106]) is adopted as the pattern which most decedents would prefer.

If the pattern of this section is not desired, it may be avoided by a properly executed will or, after the decedent's death, by renunciation by particular heirs under section [91A-2-801].

Amendments

The 1975 amendment inserted subsection (2); redesignated former subsections (2) and (3) as (3) and (4); substituted "children or grandchildren of any" for "issue of each" in subsection (4) before "deceased brother or sister"; deleted at the end of subsection (4) "if there is no surviving brother or sister, the issue of brothers and sisters take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree then those of more remote degree take by representation"; deleted former subsection (4) which read: "if there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side,

the entire estate passes to the relatives on the other side in the same manner as the half"; and in subsection (5) substituted "parent, brother, sister, or children or grandchildren of a deceased brother or sister" for "parent or issue of a parent, grandparent or issue of a grandparent, the estate passes."

DECISIONS UNDER FORMER LAW

Nieces and Nephews

Where decedent was survived only by nieces and nephews and children of deceased nephews, the nieces and nephews took per capita, and the children of the deceased nephews took per stirpes, the share that their fathers would have taken. In re Estate of Brown, 158 M 413, 432 P 2d 914.

Surviving parent

Where decedent left no surviving wife or children and his father was dead, his mother was the sole beneficiary of his estate under former statute. Cowan v. Pacific Gamble Robinson Co., 232 F Supp 403.

Undevised Remainder

Holographic will, which devised a life estate to the surviving spouse and which provided that if it became necessary to liquidate the estate it should be divided equally between testator's wife and son and daughter, did not make a testamentary disposition of the remainder after the life estate and therefore remainder would be distributed according to intestate succession. In re Hetland's Estate, — M —, 531 P 2d 367.

91A-2-104. Requirement that heir survive decedent for one hundred twenty (120) hours. Any person who fails to survive the decedent by one hundred twenty (120) hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by one hundred twenty (120) hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the state under section 91A-2-105.

History: En. 91A-2-104 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section is a limited version of the type of clause frequently found in wills to take care of the common accident situation, in which several members of the same family are injured and die within a few days of each other. The Uniform Simultaneous Death Act provides only a partial solution, since it applies only if there is no proof that the parties died otherwise than simultaneously. [The Uniform Simultaneous Death Act, sections 91-423 to 91-430, is repealed effective July 1, 1975.] This section requires an heir to survive by five days in order to succeed to decedent's intestate property; for a comparable provision as to wills, see section [91A-2-601]. This section avoids multiple administrations and in some instances prevents the property from passing to persons not desired by the decedent. The five-day period will not hold up administration of a decedent's estate because sections [91A-3-302 and 91A-3-307] prevent informal probate of a will or informal issuance of letters for a period of five days from death. The last sentence prevents the survivorship requirement from affecting inheritances by the last eligible relative of the intestate who survives him for any period.

I.R.C. § 2056(b) (3) makes it clear that an interest passing to a surviving spouse is not made a "terminable interest" and thereby disqualified for inclusion in the marital deduction by its being conditioned on failure of the spouse to survive a period not exceeding six months after the decedent's death, if the spouse in fact lives for the required period. Thus, the intestate share of a spouse who survives the decedent by five days is available for the marital deduction. To assure a marital deduction in cases where one spouse fails to survive the other by the required period, the decedent must leave a will. The marital deduction is not a problem in the typical intestate estate. The draftsmen and Special Committee concluded that the statute should accommodate the typical estate to which it applies, rather than the unusual case of an unplanned estate involving large sums of money.

91A-2-105. No taker. If there is no taker under the provisions of sections 91A-2-102 and 91A-2-103 the intestate estate passes to the state of Montana.

History: En. 91A-2-105 by Sec. 1, Ch. 365, L. 1974.

91A-2-106. Representation. If representation is called for by this code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one (1) share and the share of each deceased person in the same degree being divided among his issue in the same manner.

History: En. 91A-2-106 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Under the system of intestate succession in effect in some states, property is directed to be divided "per stirpes" among issue or descendants of identified ancestors. Applying a meaning commonly associated with the quoted words, the estate is first divided into the number indicated by the number of children of the ancestor who survive, or who leave issue who survive. If, for example, the property is directed to issue "per stirpes" of the intestate's parents, the first division would be by the number of children of parents (other than the intestate) who left issue surviving even though no person of this generation survives. Thus, if the survivors are a child and a grandchild of a deceased brother of the intestate and five children of his deceased sister, the brother's descendants would divide one-half and the five children of the sister would divide the other half. Yet, if the parent of the brother's grandchild also had survived, most statutes would give the seven nephews and nieces equal shares because it is commonly provided that if all surviving kin are in equal degree, they take per capita.

The draft rejects this pattern and keys to a system which assures that the first and principal division of the estate will be with reference to a generation which includes one or more living members.

DECISIONS UNDER FORMER LAW

Degree of Kinship

The right of representation applied to any degree of kinship, and where the nearest heirs were nieces and nephews, the children of deceased nephews were heirs by right of representation. In re Estate of Brown, 158 M 413, 492 P 2d 914.

91A-2-107. Kindred of half blood. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

History: En. 91A-2-107 by Sec. 1, Ch. 365, L. 1974.

91A-2-108. Afterborn heirs. Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent.

History: En. 91A-2-108 by Sec. 1, Ch. 365, L. 1974.

91A-2-109. Meaning of child and related terms. If, for the purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) An adopted person shall inherit as the child of an adopting parent.

(2) In cases not covered by (1), a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

(a) the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

(b) the paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subparagraph (b) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

History: En. 91A-2-109 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The definition of "child" and "parent" in section [91A-1-201] incorporates the meanings established by this section, thus extending them for all purposes of the code. See section [91A-2-802] for the definition of "spouse" for purposes of intestate succession.

DECISIONS UNDER FORMER LAW

Illegitimate Children

Application record for University of California Hospital, dated Sept. 8, 1948, signed by decedent, listing names of illegitimate children born in 1950 and 1951, did not meet requirements of former statute permitting illegitimate child to inherit from father who had acknowledged child as his in writing. In re Dauenhauer's Estate, — M —, 535 P 2d 1005.

California law governed the question of the legitimacy of purported children of decedent who were born in California to an unrecognized common-law marriage and who had resided in California and had no contacts in Montana. In re Dauenhauer's Estate, — M —, 535 P 2d 1005.

91A-2-110. Advancements. If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

History: En. 91A-2-110 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section alters the common law relating to advancements by requiring written evidence of the intent that an inter vivos gift be an advancement. The statute is phrased in terms of the donee being an "heir" because the transaction is regarded as of decedent's death; of course, the donee is only a prospective heir at the time of the transfer during lifetime. Most inter vivos transfers today are intended to be absolute gifts or are carefully integrated into a total estate plan. If the donor intends that any transfer during lifetime be deducted from the donee's share of his estate, the donor may either execute a will so providing or, if he intends to die intestate, charge the gift as an advance by a writing within the present section. The present section applies only when the decedent died intestate and not when he leaves a will.

This section applies to advances to collaterals (such as nephews and nieces) as well as to lineal descendants. The statute does not spell out the method of taking account of the advance, since this process is well settled by the common law and is not a source of litigation.

91A-2-111. Alienage. No person is disqualified to take as an heir because he or a person through whom he claims is an alien unless the country in which he resides does not allow reciprocity.

History: En. 91A-2-111 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as adopted by the National Conference of Commissioners is designated as section 2-112; the Montana enactment omitted section 2-111 of the Uniform Probate Code pertaining to debts owed to the decedent.

Editorial Board Comment

The purpose of this section is to eliminate the ancient rule that an alien cannot acquire or transmit land by descent, a rule based on the feudal notions of the obligations of the tenant to the King. Although there never was a corresponding rule as to personalty, the present section is phrased in light of the basic premise of the code that distinctions between real and personal property should be abolished.

This section has broader vitality in light of the recent decision of the United States Supreme Court in Zschernig v. Miller (1968) 389 U.S. 429, 19 L.Ed.2d 683, 88 S.Ct. 664, holding unconstitutional a state statute providing for escheat if a nonresident alien cannot meet three requirements: the existence of a reciprocal right of a United States citizen to take property on the same terms as a citizen or inhabitant of the foreign country, the right of United States citizens to receive payment here of funds from estates in the foreign country, and the right of the foreign heirs to receive the proceeds of the local estate without confiscation by the foreign government. The rationale was that such a statute involved the local probate court in matters which essentially involve United States foreign policy, whether or not there is a governing treaty with the foreign country. Hence, the statute is "an intrusion by the State into the field of foreign affairs which the Constitution entrusts to the President and the Congress."

DECISIONS UNDER FORMER LAW

Injunction

Residents of Romania could not enjoin enforcement of statutes while probate case was at intermediate stage since state was free to fashion procedure for applying statute in manner not offensive to constitution. Gorun v. Fall, 287 F Supp 725, affirmed 393 U S 398, 21 L Ed 2d 628, 89 S Ct 678.

Reciprocity

Pursuant to Rule 44.1, M. R. Civ. P., trial court had power to fashion procedures for determination of whether reciprocity of transfer and reciprocity of inheritance existed between citizens of state and citizens of foreign country. In re Estate of Giurgiu, 155 M 18, 466 P 2d 83, appeal dismissed 399 U S 901, 26 L Ed 2d 555, 90 S Ct 2195.

91A-2-111.1. Duties of personal representatives and special administrators in estates involving alien heirs. In any estate where money or property does not vest in any alien person because of the provisions of 91A-2-111, it shall be the duty of the personal representative or special administrator, within 30 days of having completed and filed the inventory and statement of value, to furnish the attorney general with the following written information and file a copy in the probate proceedings:

(1) the names and addresses of the alien heirs, devisees, legatees, or beneficiaries in the estate;

(2) the share or proportionate share of each of the alien heirs;

(3) the stated value of the entire estate.

History: En. 91A-2-112 by Sec. 1, Ch. 370, L. 1977.

Title of Act

An act providing for the duties of personal representatives or special administrators in estates involving alien heirs and providing an immediate effective date.

Effective Date

Section 2 of Ch. 370, Laws 1977 provided the act should be effective upon its passage and approval. Approved April 14, 1977.

91A-2-112. Dower and curtesy abolished. The estates of dower and curtesy are abolished.

History: En. 91A-2-112 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as adopted by the National Conference of Commissioners is designated as section 2-113.

Editorial Board Comment

The provisions of this code replaced the common-law concepts of dower and curtesy and their statutory counterparts. Those estates provided both a share in intestacy and a protection against disinheritance.

* * *

DECISIONS UNDER FORMER LAW

Indian Widow

Indian widow had no dower rights in allotment lands of her deceased husband since the relevant federal statute excluded consideration of state law. Akers v. Morton, 499 F 2d 44.

Inheritance Tax

Dower property of widow who elected to take against the will was subject to inheritance tax. Stovall v. Department of Revenue, — M —, 527 P 2d 62.

Part 2—Elective Share of Surviving Spouse

Section

91A-2-201. Right to elective share.
91A-2-202. Augmented estate.
91A-2-203. Right of election personal to surviving spouse.
91A-2-204. Waiver of right to elect and of other rights.
91A-2-205. Proceeding for elective share—time limit.
91A-2-206. Effect of election on benefits by will or statute.
91A-2-207. Charging spouse with property received—liability of others for balance of elective share.

EDITORIAL BOARD COMMENT

The sections of this part describe a system for common-law states designed to protect a spouse of a decedent who was a domiciliary against donative transfers by will and will substitutes which would deprive the survivor of a "fair share" of the decedent's estate. Optional sections adapting the elective share system to community property jurisdictions were contained in preliminary drafts, but were dropped from the final code. Problems of disherison of spouses in community states are limited to situations involving assets acquired by domiciliaries of common-law states who later become domiciliaries of a community property state, and to instances where substantially all of a deceased spouse's property is separate property. Representatives of community property states differ in regard to whether either of these problem areas warrant statutory solution.

Almost every feature of the system described herein is or may be controversial. Some have questioned the need for any legislation checking the power of married persons to transfer their property as they please. See Plager, "The Spouse's Nonbarrable Share: A Solution in Search of a Problem," 33 Chi.L.Rev. 681 (1966). Still, all common-law states except the Dakotas appear to impose some restriction on the power of a spouse to disinherit the other. In some, the ancient concept of dower continues to prevent free transfer of land by a married person. In most states, including many which have abolished dower, a spouse's protection is found in statutes which give a surviving spouse the power to take a share of the decedent's probate estate upon election rejecting the provisions of the decedent's will. These statutes expand the spouse's protection to all real and personal assets owned by the decedent at death, but usually take no account of various will substitutes which permit an owner to transfer ownership at his death without use of a will. Judicial doctrines identifying certain transfers to be "illusory" or to be in "fraud" of the spouse's share have been evolved in some jurisdictions to offset the problems caused by will substitutes, and in New York and Pennsylvania, statutes have extended the elective share of a surviving spouse to certain nontestamentary transfers.

Questions relating to the proper size of a spouse's protected interest may be raised in addition to those concerning the need for, and method of assuring, any protection. The traditions in both common-law and community property states point toward some capital sum related to the size of the deceased spouse's holdings rather than to the needs of the surviving spouse. The community property pattern produces one-half for

the surviving spouse, but is somewhat misleading as an analogy, for it takes no account of the decedent's separate property. The fraction of one-third, which is stated in section [91A-2-201], has the advantage of familiarity, for it is used in many forced-share statutes.

Although the system described herein may seem complex, it should not complicate administration of a married person's estate in any but very unusual cases. The surviving spouse rather than the executor or the probate court has the burden of asserting an election, as well as the burden of proving the matters which must be shown in order to make a successful claim to more than he or she has received. Some of the apparent complexity arises from section [91A-2-202], which has the effect of compelling an electing spouse to allow credit for all funds attributable to the decedent when the spouse, by electing, is claiming that more is due. This feature should serve to reduce the number of instances in which an elective share will be asserted. Finally, section [91A-2-204] expands the effectiveness of attempted waivers and releases of rights to claim an elective share. Thus, means by which estate planners can assure clients that their estates will not become embroiled in election litigation are provided.

Uniformity of law on the problems covered by this part is much to be desired. It is especially important that states limit the applicability of rules protecting spouses so that only estates of domiciliary decedents are involved.

91A-2-201. Right to elective share. (1) If a married person domiciled in this state dies, the surviving spouse has a right of election to take an elective share of one-third (⅓) of the augmented estate under the limitations and conditions hereinafter stated.

(2) If a married person not domiciled in this state dies, the right, if any, of the surviving spouse to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

History: En. 91A-2-201 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

See section [91A-2-802] for the definition of "spouse" which controls in this part.

Under the common law a widow was entitled to dower, which was a life estate in a fraction of lands of which her husband was seized of an estate of inheritance at any time during the marriage. Dower encumbers titles and provides inadequate protection for widows in a society which classifies most wealth as personal property. Hence the states have tended to substitute a forced share in the whole estate for dower and the widower's comparable common-law right of curtesy. Few existing forced-share statutes make adequate provisions for transfers by means other than succession to the surviving spouse and others. This and the following sections are designed to do so. The theory of these sections is discussed in Fratcher, "Toward Uniform Succession Legislation," 41 N.Y.U. L.Rev. 1037, 1050-1064 (1966). The existing law is discussed in MacDonald, Fraud on the Widow's Share (1960). Legislation comparable to that suggested here became effective in New York on Sept. 1, 1966. See Decedent Estate Law, § 18.

DECISIONS UNDER FORMER LAW

Federal Estate Taxes

Where a widow renounced the will and elected to take her dower and intestate share pursuant to former section 22-107 and her intestate share was one-third of the decedent's net estate in accordance with former section 91-403(1), such elected statutory share, which qualified for the marital deduction and generated no federal estate tax liability, was nonetheless chargeable with a proportionate share of the estate's total estate tax liability. Estate of Mosby, — M —, 554 P 2d 1341.

Where a will does not otherwise provide for the payment of federal estate taxes, the payment must be equitably apportioned among residuary interests so that a residuary interest not generating any estate taxes does not bear any burden for their payment. Robinson v. United States, 518 F 2d 1105, reversing 369 F Supp 925.

Invalid Renunciation

Widow's renunciation of her husband's will was not valid, even though widow purchased family home from executor and executed a deed quitclaiming all interest in real and personal property of the estate, and even though there may have been no fraud, misrepresentation or breach of confidential relationship, in view of

evidence that widow did not know her rights, did not understand terms of will and did not understand the significance of signing the quitclaim deed. Ericksen v. Ericksen, 152 M 179, 448 P 2d 144.

91A-2-202. Augmented estate. The augmented estate means the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(1) The value of property transferred by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(a) any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property;

(b) any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;

(c) any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(d) any transfer made within three (3) years of death of the decedent to the extent that the aggregate transfers to any one donee in any of the years exceed three thousand dollars ($3,000).

(2) Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(3) The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includable in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:

(a) Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent.

(b) Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(c) Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.

History: En. 91A-2-202 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The purpose of the concept of augmenting the probate estate in computing the elective share is twofold: (1) to prevent the owner of wealth from making arrangements which transmit his property to others by means other than probate deliberately to defeat the right of the surviving spouse to a share, and (2) to prevent the surviving spouse from electing a share of the probate estate when the spouse has received a fair share of the total wealth of the decedent either during the lifetime of the decedent or at death by life insurance, joint tenancy assets and other nonprobate arrangements. Thus essentially two separate groups of property are added to the net probate estate to arrive at the augmented net estate which is the basis for computing the one-third share of the surviving spouse. In the first category are transfers by the decedent during his lifetime which are essentially will substitutes, arrangements which give him continued benefits or controls over the property. However, only transfers during the marriage are included in this category. This makes it possibl for a person to provide for children by a prior marriage, as by a revocable living trust, without concern that such provisions will be upset by later marriage. The limitation to transfers during marriage reflects some of the policy underlying community property. What kinds of

transfers should be included here is a matter of reasonable difference of opinion. The fine-spun tests of the Federal Estate Tax Law might be utilized, of course. However, the objectives of a tax law are different from those involved here in the Probate Code, and the present section is therefore more limited. It is intended to reach the kinds of transfers readily usable to defeat an elective share in only the probate estate.

In the second category of assets, property of the surviving spouse derived from the decedent and property derived from the decedent which the spouse has, in turn, given away in a transaction that is will-like in effect or purpose, the scope is much broader. Thus a person can during his lifetime make outright gifts to relatives and they are not included in this first category unless they are made within two years of death (the exception being designed to prevent a person from depleting his estate in contemplation of death). But the time when the surviving spouse derives her wealth from the decedent is immaterial; thus if a husband has purchased a home in the wife's name and made systematic gifts to the wife over many years, the home and accumulated wealth she owns at his death as a result of such gifts ought to, and under this section do, reduce her share of the augmented estate. Likewise, for policy reasons life insurance is not included in the first category of transfers to other persons, because it is not ordinarily purchased as a way of depleting the probate estate and avoiding the elective share of the spouse; but life insurance proceeds payable to the surviving spouse are included in the second category, because it seems unfair to allow a surviving spouse to disturb the decedent's estate plan if the spouse has received ample provision from life insurance. In this category no distinction is drawn as to whether the transfers are made before or after marriage.

Depending on the circumstances it is obvious that this section will operate in the long run to decrease substantially the number of elections. This is because the statute will encourage and provide a legal base for counseling of testators against schemes to disinherit the spouse, and because the spouse can no longer elect in cases where substantial provision is made by joint tenancy, life insurance, lifetime gifts, living trusts set up by the decedent, and the other numerous nonprobate arrangements by which wealth is today transferred. On the other hand the section should provide realistic protection against disinheritance of the spouse in the rare case where decedent tries to achieve that purpose by depleting his probate estate.

The augmented net estate approach embodied in this section is relatively complex and assumes that litigation may be required in cases in which the right to an elective share is asserted. The proposed scheme should not complicate administration in well planned or routine cases, however, because the spouse's rights are freely releasable under section [91A-2-204] and because of the time limits in section [91A-2-205]. Some legislatures may wish to consider a simpler approach along the lines of the Pennsylvania Estates Act provision reading:

> "A conveyance of assets by a person who retains a power of appointment by will, or a power of revocation or consumption over the principal thereof, shall at the election of his surviving spouse, be treated as a testamentary disposition so far as the surviving spouse is concerned to the extent to which the power has been reserved, but the right of the surviving spouse shall be subject to the rights of any income beneficiary whose interest in income becomes vested in enjoyment prior to the death of the conveyor. The provisions of this subsection shall not apply to any contract of life insurance purchased by a decedent, whether payable in trust or otherwise."

In passing, it is to be noted that a Pennsylvania widow apparently may claim against a revocable trust or will even though she has been amply provided for by life insurance or other means arranged by the decedent. Penn. Stats. Annot. Title 20, § 301.11(a).

The New York Estates, Powers and Trusts Law § 5-1.1(b) also may be suggested as a model. It treats as testamentary dispositions all gifts causa mortis, money on deposit by the decedent in trust for another, money deposited in the decedent's name payable on death to another, joint tenancy property, and transfers by decedent over which he has a power to revoke or invade. The New York law also expressly excludes life insurance, pension plans, and United States savings bonds payable to a designated person. One of the drawbacks of the New York legislation is its complexity, much of which is attributable to the effort to prevent a spouse from taking an elective share when the deceased spouse has followed certain prescribed procedures. The scheme described by sections [91A-2-201] et seq. of this draft, like that of all states except New York, leaves the question of whether a spouse may or may not elect to be controlled by the economics of the situation, rather than by conditions on the statutory right. Further, the New York system gives the spouse election rights in spite of the possibility that the spouse has been well provided for by insurance or other gifts from the decedent.

91A-2-203. Right of election personal to surviving spouse. The right of election of the surviving spouse may be exercised only by him. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending, after finding that exercise is necessary to provide adequate support for the protected person during his probable life expectancy.

History: En. 91A-2-203 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

See section [91A-5-101] for definitions of protected person and protective proceedings.

91A-2-204. Waiver of right to elect and of other rights. The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

History: En. 91A-2-204 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The right to homestead allowance is conferred by section [91A-2-401], that to exempt property by section [91A-2-402], and that to family allowance by section [91A-2-403]. The right to renounce interests passing by testate or intestate succession is recognized by section [91A-2-801]. The provisions of this section, permitting a spouse or prospective spouse to waive all statutory rights in the other spouse's property seem desirable in view of the common and commendable desire of parties to second and later marriages to ensure that property derived from prior spouses passes at death to the issue of the prior spouses instead of to the newly acquired spouse. The operation of a property settlement as a waiver and renunciation takes care of the situation which arises when a spouse dies while a divorce suit is pending.

91A-2-205. Proceeding for elective share—time limit. (1) The surviving spouse may elect to take his elective share in the augmented net estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within six (6) months after the first publication of notice to creditors for filing claims which arose before the death of the decedent, or within one year of the date of death, whichever time limitation first expires. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(2) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.

(3) The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the court.

(4) After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears appropriate under section 91A-2-207. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

History: En. 91A-2-205 by Sec. 1, Ch. 365, L. 1974.

91A-2-206. Effect of election on benefits by will or statute. (1) The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to contribution under subsection 91A-2-207(2), as if the surviving spouse had predeceased the testator.

(2) A surviving spouse is entitled to homestead allowance, exempt property and family allowance whether or not he elects to take an elective share.

History: En. 91A-2-206 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The election **does not result** in a loss of benefits **under the will (in the** absence **of renunciation) because those** benefits are charged **against the elective** share under sections **[91A-2-201, 91A-2-202** and 91A-2-207(1)**].**

91A-2-207. Charging spouse with property received—liability of others for balance of elective share. (1) In the proceeding for an elective share, property which is part of the augmented estate which passes or has passed to the surviving spouse by testate or intestate succession or other means and which has not been renounced, including that described in section 91A-2-202(3), is applied first to satisfy the elective share and to reduce the amount due from other recipients of portions of the augmented estate.

(2) Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

(3) Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving

spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate.

History: En. 91A-2-207 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Sections [91A-2-401, 91A-2-402 and 91A-2-403] have the effect of giving a spouse certain exempt property and allowances in addition to the amount of the elective share.

Part 3—Spouse and Children Unprovided For in Wills

Section
91A-2-301. Omitted spouse.
91A-2-302. Pretermitted children.

91A-2-301. Omitted spouse. (1) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) In satisfying a share provided by this section, the devises made by the will abate as provided in section 91A-3-902.

History: En. 91A-2-301 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Section [91A-2-508] provides that a will is not revoked by a change of circumstances occurring subsequent to its execution other than as described by that section. This section reflects the view that the intestate share of the spouse is what the decedent would want the spouse to have if he had thought about the relationship of his old will to the new situation. The effect of this section should be to reduce the number of instances where a spouse will claim an elective share.

91A-2-302. Pretermitted children. (1) If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

(a) it appears from the will that the omission was intentional;

(b) when the will was executed the testator had one (1) or more children and devised substantially all his estate to the other parent of the omitted child; or

(c) the testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(3) In satisfying a share provided by this section, the devises made by the will abate as provided in section 91A-3-902.

History: En. 91A-2-302 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section provides for both the case where a child was born or adopted after

the execution of the will and not foreseen at the time and thus not provided for in the will, and the rare case where a testator omits one of his existing children because of mistaken belief that the child is dead.

Although the sections dealing with advancement and ademption by satisfaction ([sections 91A-2-110 and 91A-2-612]) provide that a gift during lifetime is not an advancement or satisfaction unless the testator's intent is evidenced in writing, this section permits oral evidence to establish a testator's intent that lifetime gifts or nonprobate transfers such as life insurance or joint accounts are in lieu of a testamentary provision for a child born or adopted after the will. Here there is no real contradiction of testamentary intent, since there is no provision in the will itself for the omitted child.

To preclude operation of this section it is not necessary to make any provision, even nominal in amount, for a testator's present or future children; a simple recital in the will that the testator intends to make no provision for then living children or any the testator thereafter may have would meet the requirement of [subdivision (1)(a)].

Under subsection [(3)] and section [91A-3-902], any intestate estate would first be applied to satisfy the share of a pretermitted child.

This section is not intended to alter the rules of evidence applicable to statements of a decedent.

Part 4—Exempt Property and Allowances

Section
91A-2-401. Homestead allowance.
91A-2-402. Exempt property.
91A-2-403. Family allowance.
91A-2-404. Source, determination and documentation.
91A-2-405. Allowances and exempt property included in inheritance tax exemption.

EDITORIAL BOARD COMMENT

This part describes certain rights and values to which a surviving spouse and certain children of a deceased domiciliary are entitled in preference over unsecured creditors of the estate and persons to whom the estate may be devised by will. If there is a surviving spouse, all of the values described in this part, which total $8,500 plus whatever is allowed to the spouse for support during administration, pass to the spouse. Minor or dependent children become entitled to the homestead exemption of $5,000 and to support allowances if there is no spouse, and may receive some of the support allowance if they live apart from the surviving spouse. The exempt property section confers rights on the spouse, if any, or on all children, to $3,500 in certain chattels, or funds if the unencumbered value of chattels is below the $3,500 level. This provision is designed in part to relieve a personal representative of the duty to sell household chattels when there are children who will have them.

These family protection provisions supply the basis for the important small estate provisions of [Chapter 3], Part 12.

States adopting the code may see fit to alter the dollar amounts suggested in these sections, or to vary the terms and conditions in other ways so as to accommodate existing traditions. Although creditors of estates would be aided somewhat if all family exemption provisions relating to probate estates were the same throughout the country, there is relatively less need for uniformity of law regarding these provisions than is true of any of the other parts of this article. Still, it is quite important for all states to limit their homestead, allowance and exempt property provisions, if any, so that they apply only to estates of decedents who were domiciliaries of the state.

Notice that section [91A-2-104] imposes a requirement of survival of the decedent for 120 hours on any spouse or child claiming under this part.

91A-2-401. Homestead allowance. A surviving spouse of a decedent who was domiciled in this state is entitled to a homestead allowance of $20,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to $20,000, divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the

will of the decedent unless otherwise provided, by intestate succession or by way of elective share.

History: En. 91A-2-401 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 153, L. 1977.

Editorial Board Comment

See section [91A-2-802] for the definition of "spouse" which controls in this part. Also, see section [91A-2-104]. Waiver of homestead is covered by section [91A-2-204]. "Election" between the provision of a will and homestead is covered by section [91A-2-206].

A set dollar amount for homestead allowance [$5,000 in the official text] was dictated by the desirability of having a certain level below which administration may be dispensed with or be handled summarily, without regard to the size of allowances under section [91A-2-402]. The "small estate" line is controlled largely, though not entirely, by the size of the homestead allowance. This is because Part 12 of [Chapter 3] dealing with small estates rests on the assumption that the only justification for keeping a decedent's assets from his creditors is to benefit the decedent's spouse and children.

Another reason for a set amount is related to the fact that homestead allowance may prefer a decedent's minor or dependent children over his other children. It was felt desirable to minimize the consequence of application of an arbitrary age line among children of the testator.

Amendments

The 1977 amendment changed the homestead allowance in each of the first two sentences to $20,000 from that provided in sections 33-101 through 33-129; deleted a designation of the amended text as subsection (1) and deleted a former subsection (2), which provided that if no homestead had been selected prior to a decedent's death, his personal representative should do so, and the effect of such selection would be the same as if the designation had been made by decedent.

91A-2-402. Exempt property. In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding three thousand five hundred dollars ($3,500) in excess of any security interests therein in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than three thousand five hundred dollars ($3,500), or if there is not three thousand five hundred dollars ($3,500) worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the three thousand five hundred dollars ($3,500) value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

History: En. 91A-2-402 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Unlike the exempt values described in sections [91A-2-401 and 91A-2-403], the exempt values described in this section are available in a case where the decedent left no spouse but left only adult children. The possible difference between beneficiaries of the exemptions described by sections [91A-2-401 and 91A-2-403], and this section, explain the provision in this section which establishes priorities.

Section [91A-2-204] covers waiver of exempt property rights, and section [91A-2-206] covers the question of whether a decedent's will may put a spouse to an election with reference to exemptions.

91A-2-403. Family allowance. In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this state, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one (1) year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but if case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance.

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates his right to allowances not yet paid.

History: En. 91A-2-403 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The allowance provided by this section does not qualify for the marital deduction under the Federal Estate Tax Act because the interest is terminable. A broad code must provide the best possible protection for the family in all cases, even though this may not provide desired tax advantages for certain larger estates. In estates falling in the federal estate tax bracket where careful planning may be expected, it is important to the operation of formula clauses that the family allowance be clearly terminable or clearly nonterminable. With the proposed section clearly creating a terminable interest, estate planners can create a plan which will operate with certainty. Finally, in order to facilitate administration of this allowance without court supervision it is necessary to provide a fairly simple and definite framework.

In determining the amount of the family allowance, account should be taken of both the previous standard of living and the nature of other resources available to the family to meet current living expenses until the estate can be administered and assets distributed. While the death of the principal income producer may necessitate some change in the standard of living, there must also be a period of adjustment. If the surviving spouse has a substantial income, this may be taken into account. Whether life insurance proceeds payable in a lump sum or periodic installments were intended by the decedent to be used for the period of adjustment or to be conserved as capital may be considered. A living trust may provide the needed income without resorting to the probate estate. If a husband has been the principal source of family support, a wife should not be expected to use her capital to support the family.

Obviously, need is relative to the circumstances, and what is reasonable must be decided on the basis of the facts of each individual case. Note, however, that under the next section the personal representative may not determine an allowance of more than $500 per month for one year; a court order would be necessary if a greater allowance is reasonably necessary.

DECISIONS UNDER FORMER LAW

Discretion of Court

Probate court did not abuse its discretion in denying widow's petition for family allowance where she received from $2800 to $6400 per year as income from the assets of the estate and in addition received the monthly income of $154 from social security and $75 from the rental of her home, all of which income was sufficient for her care in the nursing home where she resided. Estate of Glein, — M —, 512 P 2d 1151.

91A-2-404. Source, determination and documentation. If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. He may determine the family allowance in a lump sum not exceeding six thousand dollars ($6,000) or periodic installments not exceeding five hundred dollars ($500) per month for one (1) year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

History: En. 91A-2-404 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

See sections [91A-3-902, 91A-3-906 and 91A-3-907].

91A-2-405. Allowances and exempt property included in inheritance tax exemption. The allowances and exempt property provided for in sections 91A-2-401 through 91A-2-403 are to be included in computing the exemptions from inheritance tax provided for in section 91-4414 and are not in addition to such inheritance tax exemptions.

History: En. 91A-2-405 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

This section is not part of the Uniform Probate Code as promulgated by the National Conference of Commissioners.

Part 5—Wills

Section

91A-2-501. Who may make a will.
91A-2-502. Execution.
91A-2-503. Holographic will.
91A-2-504. Self-proved will.
91A-2-505. Who may witness—effect of witness by beneficiary.
91A-2-506. Choice of law as to execution.
91A-2-507. Revocation by writing or by act.
91A-2-508. Revocation by divorce or annulment—no revocation by other change in circumstances.
91A-2-509. Revival of revoked will.
91A-2-510. Incorporation by reference.
91A-2-511. Testamentary additions to trusts.
91A-2-512. Events of independent significance.
91A-2-513. Separate writing identifying bequest of tangible property.

EDITORIAL BOARD COMMENT

Part 5 of [Chapter 2] deals with capacity and formalities for execution and revocation of wills. If the will is to be restored to its role as the major instrument for disposition of wealth at death, its execution must be kept simple. The basic intent of these sec-

tions is to validate the will whenever possible. To this end, the age for making wills is lowered to eighteen, formalities for a written and attested will are kept to a minimum, holographic wills written and signed by the testator are authorized, choice of law as to validity of execution is broadened, and revocation by operation of law is limited to divorce or annulment. However, the statute also provides for a more formal method of execution with acknowledgment before a public officer (the self-proved will).

91A-2-501. Who may make a will. Any person eighteen (18) or more years of age who is of sound mind may make a will.

History: En. 91A-2-501 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section states a uniform minimum age of eighteen for capacity to execute a will. "Minor" is defined in section [91A-1-201], and may involve a different age than that prescribed here.

91A-2-502. Execution. Except as provided for holographic wills, writings within section 91A-2-513, and wills within section 91A-2-506, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least two (2) persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

History: En. 91A-2-502 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The formalities for execution of a witnessed will have been reduced to a minimum. Execution under this section normally would be accomplished by signature of the testator and of two witnesses; each of the persons signing as witnesses must "witness" any of the following: the signing of the will by the testator, an acknowledgment by the testator that the signature is his, or an acknowledgment by the testator that the document is his will. Signing by the testator may be by mark under general rules relating to what constitutes a signature; or the will may be signed on behalf of the testator by another person signing the testator's name at his direction and in his presence. There is no requirement that the testator publish the document as his will, or that he request the witnesses to sign, or that the witnesses sign in the presence of the testator or of each other. The testator may sign the will outside the presence of the witnesses if he later acknowledges to the witnesses that the signature is his or that the document is his will, and they sign as witnesses. There is no requirement that the testator's signature be at the end of the will; thus, if he writes his name in the body of the will and intends it to be his signature, this would satisfy the statute. The intent is to validate wills which meet the minimal formalities of the statute.

A will which does not meet these requirements may be valid under section [91A-2-503] as a holograph.

DECISIONS UNDER FORMER LAW

Attestation Clause—Presumption of Due Execution

Where testator did not sign will in presence of witnesses, had attesting witnesses sign on separate occasions without knowing document was will, and crossed out portions of typewritten document, purported will was not executed and attested in substantial compliance with statute and there was no presumption of due execution, in spite of presence of attestation clause. In re Birkeland's Estate, — M —, 519 P 2d 154.

Declaration to Attesting Witness

Evidence that testator did not verbally declare to attesting witnesses that document was his last will and testament but that he merely handed pen to the witness and by motion indicated that he wished the witness to sign the attestation clause did not establish a deficiency in execution since the declarations by the testator were not required to be in exact terms but could be implied from his conduct and the attendant circumstances. Wallin v. Kinyon Estate, — M —, 519 P 2d 1236.

Substantial Compliance

In order for will to be validly executed, substantial compliance with former statute on execution of will was required and not merely compliance with substantial portion of statute; there was no substantial compliance where testator procured signatures of attesting witnesses on sep-

arate occasions and attempted to conceal nature of document from them and one witness testified he did not know if testator's signature was on document at time he attested to it. In re Birkeland's Estate, — M —, 519 P 2d 154.

91A-2-503. Holographic will. A will which does not comply with section 91A-2-502 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

History: En. 91A-2-503 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section enables a testator to write his own will in his handwriting. There need be no witnesses. The only requirement is that the signature and the material provisions of the will be in the testator's handwriting. By requiring only the "material provisions" to be in the testator's handwriting (rather than requiring, as some existing statutes do, that the will be "entirely" in the testator's handwriting) a holograph may be valid even though immaterial parts such as date or introductory wording be printed or stamped. A valid holograph might even be executed on some printed will forms if the printed portion could be eliminated and the handwritten portion could evidence the testator's will. For persons unable to obtain legal assistance, the holographic will may be adequate.

DECISIONS UNDER FORMER LAW

Dating of Will

Where purported holographic will contained no date and inspection of document, which had been damaged by fire, revealed no place where date might have been inserted, it was not entitled to probate. Matter of Estate of Gudmunsen, — M —, 545 P 2d 146.

Hearing and Testimony

It was error to deny petition for probate of holographic will without hearing and testimony as to whether will was entirely in testator's handwriting and entitled to probate. In re Craddock's Estate, — M —, 530 P 2d 483.

91A-2-504. Self-proved will. An attested will may at the time of its execution or at any subsequent date be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this state, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF .....

COUNTY OF .....

We, ..., ..., and ....., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time eighteen or more years of age, of sound mind and under no constraint or undue influence.

.....
Testator

.....
Witness

.....
Witness

Subscribed, sworn to and acknowledged before me by ....., the testator, and subscribed and sworn to before me by ..... and ....., witnesses, this ..... day of ....., ...

(SEAL) (Signed) .....

.....

(Official capacity of officer)

History: En. 91A-2-504 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

A self-proved will may be admitted to probate as provided in sections [91A-3-303, 91A-3-405 and 91A-3-406] without the testimony of any subscribing witness, but otherwise it is treated no differently than a will not self-proved. Thus, a self-proved will may be contested (except in regard to signature requirements), revoked, or amended by a codicil in exactly the same fashion as a will not self-proved. The significance of the procedural advantage for a self-proved will is limited to formal testacy proceedings because section [91A-3-303] dealing with informal probate dispenses with the necessity of testimony of witnesses even though the instrument is not self-proved under this section.

91A-2-505. Who may witness—effect of witness by beneficiary. (1) Any person generally competent to be a witness may act as a witness to a will.

(2) A will is not invalid because the will is signed by an interested witness.

(3) All beneficial devises made in any will to a subscribing witness thereto, are void, unless there are two (2) other competent subscribing witnesses to the same; but a mere charge on the estate of the testator does not prevent his creditors from being competent witnesses to his will.

(4) If a witness, to whom any beneficial devise, void under the preceding section, is made, would have been entitled to any share of the estate of the testator if the testator had died intestate, such witness succeeds to so much of the share as would be distributed to him under intestate succession, not exceeding the devise or bequest made to him in the will.

History: En. 91A-2-505 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

Subsections (2) and (3) are not part of the corresponding section of the Uniform Probate Code as promulgated by the National Conference of Commissioners.

Editorial Board Comment

This section simplifies the law relating to interested witnesses. Interest no longer disqualifies a person as a witness, nor does it invalidate or forfeit a gift under the will. Of course, the purpose of this change is not to foster use of interested witnesses, and attorneys will continue to use disinterested witnesses in execution of wills. But the rare and innocent use of a member of the testator's family on a homedrawn will would no longer be penalized. This change does not increase appreciably the opportunity for fraud or undue influence. A substantial gift by will to a person who is one of the witnesses to the execution of the will would itself be a suspicious circumstance, and the gift could be challenged on grounds of undue influence. The requirement of disinterested witnesses has not succeeded in preventing fraud and undue influence; and in most cases of undue influence, the influencer is careful not to sign as witness but to use disinterested witnesses.

An interested witness is competent to testify to prove execution of the will, under section [91A-3-406].

91A-2-506. Choice of law as to execution. A written will is valid if executed in compliance with section 91A-2-502 or 91A-2-503 or if its execution complies with the law at the time of execution of the place where

the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national.

History: En. 91A-2-506 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section permits probate of wills in this state under certain conditions even if they are not executed in accordance with the formalities of section [91A-2-502].

Such wills must be in writing but otherwise are valid if they meet the requirements for execution of the law of the place where the will is executed (when it is executed in another state or country) or the law of testator's domicile, abode or nationality at either the time of execution or at the time of death. Thus, if testator is domiciled in state 1 and executes a typed will merely by signing it without witnesses in state 2 while on vacation there, the court of this state would recognize the will as valid if the law of either state 1 or state 2 permits execution by signature alone. Or if a national of Mexico executes a written will in this state which does not meet the requirements of section [91A-2-502] but meets the requirements of Mexican law, the will would be recognized as validly executed under this section. The purpose of this section is to provide a wide opportunity for validation of expectations of testators. When the Uniform Probate Code is widely adopted, the impact of this section will become minimal.

A similar provision relating to choice of law as to revocation was considered but was not included. Revocation by subsequent instruments are covered. Revocations by act, other than partial revocations, do not cause much difficulty in regard to choice of laws.

91A-2-507. Revocation by writing or by act. A will or any part thereof is revoked

(1) by a subsequent will which revokes the prior will or part expressly or by inconsistency; or

(2) by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

History: En. 91A-2-507 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Revocation of a will may be by either a subsequent will or an act done to the document. If revocation is by a subsequent will, it must be properly executed. This section employs the traditional language which has been interpreted by the courts in many cases. It leaves to the court the determination of whether a subsequent will which has no express revocation clause is inconsistent with the prior will so as to revoke it wholly or partially, and in the case of an act done to the document the determination of whether the act is a sufficient burning, tearing, canceling, obliteration or destruction and was done with the intent and for the purpose of revoking. The latter necessarily involves exploration of extrinsic evidence, including statements of testator as to intent.

The section specifically permits partial revocation. Each court is free to apply its own doctrine of dependent relative revocation.

The section does not affect present law in regard to the case of accidental destruction which is later confirmed by revocatory intention.

DECISIONS UNDER FORMER LAW

Revocation by Subsequent Will

Subsequent will, containing provisions wholly inconsistent with the terms of former will, was not a valid revocation of former will where husband and wife had drawn mutual wills in favor of each other pursuant to oral contract conveying their assets to provide financing for their corporate business. Conitz v. Walker, — M —, 541 P 2d 1028.

91A-2-508. Revocation by divorce or annulment—no revocation by other change in circumstances. If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former

spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of section 91A-2-802(2). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

History: En. 91A-2-508 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The section deals with what is sometimes called revocation by operation of law. It provides for revocation by a divorce or annulment only. No other change in circumstances operate to revoke the will; this is intended to change the rule in some states that subsequent marriage or marriage plus birth of issue operate to revoke a will. Of course, a specific devise may be adeemed by transfer of the property during the testator's lifetime except as otherwise provided in this code; although this is occasionally called revocation, it is not within the present section. The provisions with regard to invalid divorce decrees parallel those in section [91A-2-802]. Neither this section nor [91A-2-802] includes "divorce from bed and board" as an event which affects devises or marital rights on death.

But see section [91A-2-204] providing that a complete property settlement entered into after or in anticipation of separation or divorce constitutes a renunciation of all benefits under a prior will, unless the settlement provides otherwise.

Although this section does not provide for revocation of a will by subsequent marriage of the testator, the spouse may be protected by section [91A-2-301] or an elective share under section [91A-2-201].

91A-2-509. Revival of revoked will. (1) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under section 91A-2-507, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

(2) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

History: En. 91A-2-509 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section adopts a limited revival doctrine. If testator executes will no. 1 and later executes will no. 2, there is a question as to whether testator intended to die intestate or have will no. 1 revived as his last will. Under this section will no. 1 can be probated as testator's last will if his intent to that effect can be established. For this purpose testimony as to his statements at the time he revokes will no. 2 or at a later date can be admitted. If will no. 2 is revoked by a third will, will no. 1 would remain revoked except to the extent that will no. 3 showed an intent to have will no. 1 effective.

91A-2-510. Incorporation by reference. Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

History: En. 91A-2-510 by Sec. 1, Ch. 365, L. 1974.

91A-2-511. Testamentary additions to trusts. A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator (regardless of the existence, size, or character of the corpus of the trust). The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given and shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator (regardless of whether made before or after the execution of the testator's will), and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise to lapse.

History: En. 91A-2-511 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This is section 1 of the Uniform Testamentary Additions to Trusts Act.

91A-2-512. Events of independent significance. A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

History: En. 91A-2-512 by Sec. 1, Ch. 365, L. 1974.

91A-2-513. Separate writing identifying bequest of tangible property. Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items

and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

History: En. 91A-2-513 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

As part of the broader policy of effectuating a testator's intent and of relaxing formalities of execution, this section permits a testator to refer in his will to a separate document disposing of certain tangible personalty. The separate document may be prepared after execution of the will, so would not come within section [91A-2-510] on incorporation by reference. It may even be altered from time to time. It need only be either in the testator's handwriting or signed by him. The typical case would be a list of personal effects and the persons whom the testator desired to take specified items.

Part 6—Rules of Construction

Section

91A-2-601. Requirement that devisee survive testator by one hundred twenty (120) hours.
91A-2-602. Choice of law as to meaning and effect of wills.
91A-2-603. Rules of construction and intention.
91A-2-604. Construction that will passes all property—after-acquired property.
91A-2-605. Anti-lapse—deceased devisee—class gift.
91A-2-606. Failure of testamentary provision.
91A-2-607. Change in securities—accessions—nonademption.
91A-2-608. Nonademption of specific devises in certain cases—sale by conservator—unpaid proceeds of sale, condemnation or insurance.
91A-2-609. Non-exoneration.
91A-2-610. Exercise of power of appointment.
91A-2-611. Construction of generic terms to accord with relationships as defined for intestate succession.
91A-2-612. Ademption by satisfaction.

EDITORIAL BOARD COMMENT

Part 6 deals with a variety of construction problems which commonly occur in wills. All of the "rules" set forth in this part yield to a contrary intent expressed in the will and are therefore merely presumptions. Some of the sections are found in all states, with some variation in wording; others are relatively new. The sections deal with such problems as death before the testator (lapse), the inclusiveness of the will as to property of the testator, effect of failure of a gift in the will, change in form of securities specifically devised, ademption by reason of fire, sale and the like, exoneration, exercise of power of appointment by general language in the will, and the kinds of persons deemed to be included within various class gifts which are expressed in terms of family relationships.

91A-2-601. Requirement that devisee survive testator by one hundred twenty (120) hours. A devisee who does not survive the testator by one hundred twenty (120) hours is treated as if he predeceased the testator, unless the will of decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

History: En. 91A-2-601 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This parallels section [91A-2-104] requiring an heir to survive by 120 hour in order to inherit.

91A-2-602. Choice of law as to meaning and effect of wills. The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the public policy of this state otherwise applicable to the disposition.

History: En. 91A-2-602 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

New York Estates, Powers & Trusts Law Sec. 3-5.1(h) and Illinois Probate Act Sec. 896(b) direct respect for a testator's choice of local law with reference to personal and intangible property situated in the enacting state. This provision goes further and enables a testator to select the law of a particular state for purposes of interpreting his will without regard to the location of property covered thereby. So long as local public policy is accommodated, the section should be accepted as necessary and desirable to add to the utility of wills. Choice of law regarding formal validity of a will is in section [91A-2-506]. See also sections [91A-3-202 and 91A-3-408].

91A-2-603. Rules of construction and intention. The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this part apply unless a contrary intention is indicated by the will.

History: En. 91A-2-603 by Sec. 1, Ch. 365, L. 1974.

DECISIONS UNDER FORMER LAW

Creation of Life Estate

Holographic will stating "I want her to have free use of and administer my estate for life or as long as she cares to" created a life estate. In re Hetland's Estate, — M —, 531 P 2d 367.

Devise with Explanation

Devise of testator's entire estate to his wife, stating that his reason for so doing was the knowledge that she would be fair and equitable to all of the children, did not limit the testamentary gift or the wife's right to devise the property solely to her own children. Stapleton v. DeVries, — M —, 535 P 2d 1267.

Division of Residue

Holographic will making specific bequests to various persons' children and directing that any residue be divided by percentage "to all of them more or less" was construed to bequeath specific sums to children as classes rather than individually but with children to participate equally as individuals in residue. In re Estate of Jensen, 152 M 495, 452 P 2d 418.

Establishment of Will

Presumption created by former statute requiring that construction which would prevent total intestacy be preferred over another construction did not aid in making a will out of an instrument which showed no testamentary intent other than use of the word "will," but rather spoke in terms of authorizing present acts with respect to personal property. In re Estate of Gasparovich, 158 M 21, 487 P 2d 1148.

Maxims Applicable

Where will had left legatee a sum of cash, a sewing table, a color television set, luggage, costume jewelry, a cut glass vase and pitcher, personal effects and clothes, application of the doctrine of ejusdem generis was appropriate to determine whether "personal effects" included diamond jewelry valued at $8,700; it was also appropriate to apply doctrine to determine whether "costume jewelry" included the diamond jewelry. Matter of Estate of Donovan, — M —, 546 P 2d 512.

Precatory Words

Language in will devising entire estate to wife and adding, "with knowledge that she will be fair and equitable to all of my children, the issue of myself and my former wife, as well as the issue of herself and myself" did not create a trust for the benefit of children of former wife. Stapleton v. DeVries, — M —, 535 P 2d 1267.

Undevised Remainder

Clause in holographic will providing for distribution plan if it became necessary to liquidate the estate was not a testamentary disposition, and upon the death of the surviving spouse, the estate was distributed according to intestate succession. In re Hetland's Estate, — M —, 531 P 2d 367.

91A-2-604. Construction that will passes all property—after-acquired property. A will is construed to pass all property which the testator owns at his death including property acquired after the execution of the will.

History: En. 91A-2-604 by Sec. 1, Ch. 365, L. 1974.

91A-2-605. Anti-lapse—deceased devisee—class gift. If a devisee who is a grandparent or a lineal descendent of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by one hundred twenty (120) hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree then those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

History: En. 91A-2-605 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section prevents lapse by death of a devisee before the testator if the devisee is a relative and leaves issue who survives the testator. A relative is one related to the testator by kinship and is limited to those who can inherit under section [91A-2-103] (through grandparents); it does not include persons related by marriage. Issue includes adopted persons and illegitimates to the extent they would inherit from the devisee; see sections [91A-1-201 and 91A-2-109]. Note that the section is broader than some existing anti-lapse statutes which apply only to devises to children and other descendants, but is narrower than those which apply to devises to any person. The section is expressly applicable to class gifts, thereby eliminating a frequent source of litigation. It also applies to the so-called "void" gift, where the devisee is dead at the time of execution of the will. This, though contrary to some decisions, seems justified. It still seems likely that the testator would want the issue of a person included in a class term but dead when the will is made to be treated like the issue of another member of the class who was alive at the time the will was executed but who died before the testator.

The five-day survival requirement stated in section [91A-2-601] does not require issue who would be substituted for their parent by this section to survive their parent by any set period.

Section [91A-2-106] describes the method of division when a taking by representation is directed by the code.

91A-2-606. Failure of testamentary provision. (1) Except as provided in section 91A-2-605 if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(2) Except as provided in section 91A-2-605 if the residue is devised to two (2) or more persons and the share of one (1) of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

History: En. 91A-2-606 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

If a devise fails by reason of lapse and the conditions of section [91A-2-605] are met, the latter section governs rather than this section. There is also a special rule for renunciation contained in section [91A-2-801]; a renounced devise may be governed by either section [91A-2-605] or the present section, depending on the circumstances.

91A-2-607. Change in securities—accessions—nonademption. (1) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(a) as much of the devised securities as is a part of the estate at time of the testator's death;

(b) any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity;

(c) securities of another entity owned by the testator as a result of a merger, consolidation, reorganization or other similar action initiated by the entity; and

(d) any additional securities of the entity owned by the testator as a result of a plan of reinvestment if it is a regulated investment company.

(2) Distributions prior to death with respect to a specifically devised security not provided for in subsection (1) are not part of the specific devise.

History: En. 91A-2-607 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Subsection [(2)] is intended to codify existing law to the effect that cash dividends declared and payable as of a record date occurring before the testator's death do not pass as a part of the specific devise even though paid after death. See section 4, Revised Uniform Principal and Income Act [secs. 67-1901 et seq.].

91A-2-608. Nonademption of specific devises in certain cases—sale by conservator—unpaid proceeds of sale, condemnation or insurance. (1) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a pecuniary devise equal to so much of the sale price, condemnation award or insurance proceeds as remains in the estate and is identifiable at the time of the decedent's death.

This subsection does not apply if subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one (1) year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (2).

(2) A specific devisee has the right to the remaining specifically devised property and:

(a) any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on the property; and

(d) property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

History: En. 91A-2-608 by Sec. 1, Ch. 365, L. 1974.

91A-2-609. Non-exoneration. A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

History: En. 91A-2-609 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

See section [91A-3-814] empowering the personal representative to pay an encumbrance under some circumstances; the last sentence of that section makes it clear that such payment does not increase the right of the specific devisee. The present section governs the substantive rights of the devisee. The common-law rule of exoneration of the specific devise is abolished by this section, and the contrary rule is adopted.

For the rule as to exempt property, see section [91A-2-402].

91A-2-610. Exercise of power of appointment. A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

History: En. 91A-2-610 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Although there is some indication that more states will adopt special legislation on powers of appointment, and this code has therefore generally avoided any provisions relating to powers of appointment, there is great need for uniformity on the subject of exercise by a will purporting to dispose of all of the donee's property, whether by a standard residuary clause or a general recital of property passing under the will. Although a substantial number of states have legislation to the effect that a will with a general residuary clause does manifest an intent to exercise a power, the contrary rule is stated in the present section for two reasons: (1) this is still the majority rule in the United States, and (2) most powers of appointment are created in marital deduction trusts and the donor would prefer to have the property pass under his trust instrument unless the donee affirmatively manifests an intent to exercise the power.

Under this section and section [91A-2-603] the intent to exercise the power is effective if it is "indicated by the will." This wording permits a court to find the manifest intent if the language of the will interpreted in light of all the surrounding circumstances shows that the donee intended an exercise, except, of course, if the donor has conditioned exercise on an express reference to the original creating instrument. In other words, the modern liberal rule on interpretation of the donee's will would be available.

91A-2-611. Construction of generic terms to accord with relationships as defined for intestate succession. Half bloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession.

History: En. 91A-2-611 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners adds at the end of the section: "but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father."

Editorial Board Comment

The purpose of this section is to facilitate a modern construction of gifts, usually class gifts, in wills.

91A-2-612. Ademption by satisfaction. Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise,

or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

History: En. 91A-2-612 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section parallels section [91A-2-110] on advancements and follows the same policy of requiring written evidence that lifetime gifts are to be taken into account in distribution of an estate, whether testate or intestate. Although courts traditionally call this "ademption by satisfaction" when a will is involved, and "advancement" when the estate is intestate, the difference in terminology is not significant. Some wills expressly provide for lifetime advances by a hotchpot clause. Where the will is silent, the above section would require either the testator to declare in writing that the gift is an advance or satisfaction or the devisee to acknowledge the same in writing. The second sentence on value accords with section [91A-2-110] and would apply if property such as stock is given. If the devise is specific, a gift of the specific property during lifetime would adeem the devise by extinction rather than by satisfaction, and this section would be inapplicable. If a devisee to whom an advancement is made predeceases the testator and his issue take under section [91A-2-605], they take the same devise as their ancestor; if the devise is reduced by reason of this section as to the ancestor, it is automatically reduced as to his issue. In this respect the rule in testacy differs from that in intestacy; see section [91A-2-110].

Part 7—Contractual Arrangements Relating to Death

Section
91A-2-701. Contracts concerning succession.

91A-2-701. Contracts concerning succession. A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this act, can be established only by

(1) provisions of a will stating material provisions of the contract;

(2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

(3) a writing signed by the decedent evidencing the contract.

The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

History: En. 91A-2-701 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

It is the purpose of this section to tighten the methods by which contracts concerning succession may be proved. Oral contracts not to revoke wills have given rise to much litigation in a number of states; and in many states if two persons execute a single document as their joint will, this gives rise to a presumption that the parties had contracted not to revoke the will except by consent of both.

This section requires that either the will must set forth the material provisions of the contract, or the will must make express reference to the contract and extrinsic evidence prove the terms of the contract, or there must be a separate writing signed by the decedent evidencing the contract. Oral testimony regarding the contract is permitted if the will makes reference to the contract, but this provision of the statute is not intended to affect normal rules regarding admissibility of evidence.

DECISIONS UNDER FORMER LAW

Contract to bequeath property

Proof of an oral contract by a deceased to leave property by will must be clear, cogent, and convincing, and the making of such an oral contract or agreement must be established by disinterested witnesses. Cox v. Williamson, 124 M 512, 227 P 2d 614.

Where wife had transferred considerable amounts of property to corporation and had assumed considerable obligation as cosigner of note in financing the corporation, and in return received one share of corporate stock, the execution of mutual wills between husband and wife was shown to be pursuant to an oral contract and was not revoked by subsequent will executed by husband. Conitz v. Walker, — M —, 541 P 2d 1028.

Part 8—General Provisions

Section
91A-2-801. Renunciation of succession.
91A-2-802. Effect of divorce, annulment and decree of separation.
91A-2-803. Effect of homicide on intestate succession, wills, joint assets, life insurance and beneficiary designations.

EDITORIAL BOARD COMMENT

Part 8 contains three general provisions which cut across both testate and intestate succession. The first section permits renunciation; the existing law in most states permits renunciation of gifts by will but not by intestate succession, a distinction which cannot be defended on policy grounds. The second section deals with the effect of divorce and separation on the right to elect against a will, exempt property and allowances, and an intestate share. The last section, an optional provision, spells out the legal consequence of murder on the right of the murderer to take as heir, devisee, joint tenant or life insurance beneficiary.

91A-2-801. Renunciation of succession. (1) A person (or his personal representative) who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument may renounce in whole or in part the succession to any property or interest therein by filing a written instrument within the time and at the place hereinafter provided. The instrument shall

(a) describe the property or part thereof or interest therein renounced,
(b) be signed by the person renouncing, and
(c) declare the renunciation and the extent thereof.

(2) The writing specified in (1) must be filed within six (6) months after the death of the decedent or the donee of the power, or if the taker of the property is not then finally ascertained not later than six (6) months after the event by which the taker or the interest is finally ascertained. The writing must be filed in the court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. A copy of the writing also shall be mailed to the personal representative of the decedent.

(3) Unless the decedent or donee of the power has otherwise indicated by his will, the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had predeceased the decedent, or if the person renouncing is one designated to take pursuant to a power of appointment exercised by a testamentary instrument, as if the person renouncing had predeceased the donee of the power. In every case the renunciation relates back for all purposes to the date of death of the decedent or the donee, as the case may be.

(4) Any assignment, conveyance, encumbrance, pledge or transfer of property therein or any contract therefor, written waiver of the right to renounce or any acceptance of property by an heir, devisee, person succeeding to a renounced interest, beneficiary or person designated to take pursuant to a power of appointment exercised by testamentary instrument, or sale or other disposition of property pursuant to judicial process, made before the expiration of the period in which he is permitted to renounce, bars the right to renounce as to the property.

(5) The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(6) This section does not abridge the right of any person to assign, convey, release, or renounce any property arising under any other section of this code or other statute.

(7) Any interest in property which exists on the effective date of this section, but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be renounced after the effective date of this section as provided herein. An interest which has arisen prior to the effective date of this section in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section.

History: En. 91A-2-801 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section is designed to facilitate renunciation in order to aid postmortem planning. Although present law in all states permits renunciation of a devise under a will, the common law did not permit renunciation of an intestate share. There is no reason for such a distinction, and some states have already adopted leg-

islation permitting renunciation of an intestate share. Renunciation may be made for a variety of reasons, including carrying out the decedent's wishes not expressed in a properly executed will.

Under the rule of this section, renounced property passes as if the renouncing person had failed to survive the decedent. In the case of intestate property, the heir who would be next in line in succession would take; often this will be the issue of the renouncing person, taking by representation. For consistency the same rule is adopted for renunciation by a devisee; if the devisee is a relative who leaves issue surviving the testator, the issue will take under section [91A-2-605]; otherwise disposition will be governed by section [91A-2-606] and general rules of law.

The section limits renunciation to six months after the death of the decedent or if the taker of the property is not ascertained at that time, then six months after he is ascertained. If the personal representative is concerned about closing the estate within that six months' period in order to make distribution, he can obtain a waiver of the right to renounce. Normally this should be no problem, since the heir or devisee cannot renounce once he has taken possession of the property.

The presence of a spendthrift clause does not prevent renunciation under this section.

91A-2-802. Effect of divorce, annulment and decree of separation. (1) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) For purposes of sections 91A-2-101 through 91A-2-404 and of 91A-3-203, a surviving spouse does not include:

(a) a person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife;

(b) a person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or

(c) a person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

History: En. 91A-2-802 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

See section [91A-2-508] for similar provisions relating to the effect of divorce to revoke devises to a spouse.

Although some existing statutes bar the surviving spouse for desertion or adultery, the present section requires some definitive legal act to bar the surviving spouse. Normally, this is divorce. Subsection [(1)] states an obvious proposition, but subsection [(2)] deals with the difficult problem of invalid divorce or annulment, which is particularly frequent as to foreign divorce decrees but may arise as to a local decree where there is some defect in jurisdiction; the basic principle underlying these provisions is estoppel against the surviving spouse. Where there is only a legal separation, rather than a divorce, succession patterns are not affected; but if the separation is accompanied by a complete property settlement, this may operate under section [91A-2-204] as a renunciation of benefits under a prior will and by intestate succession.

91A-2-803. Effect of homicide on intestate succession, wills, joint assets, life insurance and beneficiary designations. (1) A surviving spouse, heir or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this article, and the estate of decedent passes as if the killer had predeceased the decedent.

Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

(6) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

History: En. 91A-2-803 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

* * *

A growing group of states have enacted statutes dealing with the problems covered by this section, and uniformity appears desirable. The section is confined to intentional and felonious homicide and excludes the accidental manslaughter killing.

At first it may appear that the matter dealt with is criminal in nature and not a proper matter for probate courts. However, the concept that a wrongdoer may not profit by his own wrong is a civil concept, and the probate court is the proper forum to determine the effect of killing on succession to property of the decedent. There are numerous situations where the same conduct gives rise to both criminal and civil consequences. A killing may result in criminal prosecution for murder and civil litigation by the murdered person's family under wrongful death statutes. While conviction in the criminal prosecution under this section treated as conclusive on the matter of succession to the murdered person's property, acquittal does not have the same consequences. This is because different considerations as well as a different burden of proof enter into the finding of guilty in the criminal prosecution. Hence it is possible that the defendant on a murder charge may be found not guilty and acquitted, but if the same person claims as an heir or devisee of the decedent, he may in the probate court be found to have feloniously and intentionally killed the decedent and thus be barred under this section from sharing in the estate. An analogy exists in the tax field, where a taxpayer may be acquitted of tax fraud in a criminal prosecution but found to have committed the fraud in a civil proceeding. In many of the cases arising under this section there may be no criminal prosecution because the murderer has committed suicide.

Part 9—Custody and Deposit of Wills

Section
91A-2-901. Deposit of will with court for safekeeping.
91A-2-902. Duty of custodian of will—liability.

91A-2-901. Deposit of will with court for safekeeping. A will may be deposited by the testator or his agent with any court for safekeeping, under rules of the court. The will shall be kept confidential. During the testator's lifetime a deposited will shall be delivered only to him or to a person authorized in writing signed by him to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to assure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to him on request; or the court may deliver the will to the appropriate court.

History: En. 91A-2-901 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Many states already have statutes permitting deposit of wills during a testator's lifetime. Most of these statutes have elaborate provisions governing purely administrative matters: how the will is to be enclosed in a sealed wrapper, what is to be endorsed on the wrapper, the form of receipt or certificate given to the testator, the fee to be charged, how the will is to be opened after testator's death and who is to be notified. Under this section, details have been left to court rule, except as other relevant statutes such as one governing fees may apply.

It is, of course, vital to maintain the confidential nature of deposited wills. However, this obviously does not prevent the opening of the will after the death of the testator if necessary in order to determine the executor or other interested persons to be notified. Nor should it prevent opening the will to microfilm for confidential record storage, for example. These matters could again be regulated by court rule.

It is suggested that in the near future it may be desirable to develop a central filing system regarding the presence of deposited wills, because the mobility of our modern population makes it probable that the testator will not die in the county where his will is deposited. Thus a statute might require that the local registrar notify an appropriate official, that the will is on file; the state official would in effect provide a clearinghouse for information on location of deposited wills without disrupting the local administration.

The provision permitting examination of a will of a protected person by the conservator supplements section [91A-5-427].

91A-2-902. Duty of custodian of will—liability. After the death of a testator and on request of an interested person, any person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and if none is known, to an appropriate court. Any person who willfully fails to deliver a will is liable to any person aggrieved for the damages which may be sustained by the failure. Any person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

History: En. 91A-2-902 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Model Probate Code Section 63, slightly changed. A person authorized by a court to accept delivery of a will from a custodian may, in addition to a registrar or clerk, be a universal successor or other person authorized under the law of another nation to carry out the terms of a will.

CHAPTER 3

PROBATE OF WILLS AND ADMINISTRATION

Part

1. General provisions, 91A-3-101 to 91A-3-109.
2. Venue for probate and administration—priority to administer—demand for notice, 91A-3-201 to 91A-3-204.
3. Informal probate and appointment proceedings, 91A-3-301 to 91A-3-311.
4. Formal testacy and appointment proceedings, 91A-3-401 to 91A-3-414.
5. Supervised administration, 91A-3-501 to 91A-3-505.
6. Personal representative—appointment, control and termination of authority, 91A-3-601 to 91A-3-618.
7. Duties and powers of personal representatives, 91A-3-701 to 91A-3-713, 91A-3-715.1 to 91A-3-722.
8. Creditors' claims, 91A-3-801 to 91A-3-816.
9. Special provisions relating to distribution, 91A-3-901 to 91A-3-916.
10. Closing estates, 91A-3-1001 to 91A-3-1012.
11. Compromise of controversies, 91A-3-1101, 91A-3-1102.
12. Procedure for collection of personal property by affidavit, termination of joint tenancies and life estates, and summary administration procedure for small estates, 91A-3-1201 to 91A-3-1204.

Part 1—General Provisions

Section

91A-3-101. Devolution of estate at death—restrictions.
91A-3-102. Necessity of order of probate for will.
91A-3-103. Necessity of appointment for administration.
91A-3-104. Claims against decedent—necessity of administration.
91A-3-105. Proceedings affecting devolution and administration—jurisdiction of subject matter.
91A-3-106. Proceedings within exclusive jurisdiction of court.
91A-3-107. Scope of proceedings—proceedings independent—exception.
91A-3-108. Probate, testacy and appointment proceedings—time limit—exception.
91A-3-109. Statutes of limitation on decedent's cause of action.

EDITORIAL BOARD COMMENT

The provisions of this [chapter] describe the Flexible System of Administration of Decedents' Estates. Designed to be applicable to both intestate and testate estates and to provide persons interested in decedents' estates with as little or as much by way of procedural and adjudicative safeguards as may be suitable under varying circumstances, this system is the heart of the Uniform Probate Code.

The organization and detail of the system here described may be expressed in varying ways and some states may see fit to reframe parts of this article to better accommodate local institutions. Variations in language from state to state can be tolerated without loss of the essential purposes of procedural uniformity and flexibility, if the following essential characteristics are carefully protected in the re-drafting process:

(1) Post-mortem probate of a will must occur to make a will effective and appointment of a personal representative by a public official after the decedent's death is required in order to create the duties and powers attending the office of personal representative. Neither is compelled, however, but both are left to be obtained by persons having an interest in the consequence of probate or appointment. Estates descend at death to successors identified by any probated will, or to heirs if no will is probated, subject to rights which may be implemented through administration.

(2) Two methods of securing probate of wills which include a nonadjudicative determination (informal probate) on the one hand, and a judicial determination after notice to all interested persons (formal probate) on the other, are provided.

(3) Two methods of securing appointment of a personal representative which include appointment without notice and without final adjudication of matters relevant to priority for appointment (informal appointment), on the one hand, and appointment by judicial order after notice to interested persons (formal appointment) on the other, are provided.

(4) A five-day waiting period from death preventing informal probate or informal appointment of any but a special administrator is required.

(5) Probate of a will by informal or formal proceedings or an adjudication of intestacy may occur without any attendant requirement of appointment of a personal representative.

(6) One judicial, in rem, proceeding encompassing formal probate of any wills (or a determination after notice that the decedent left no will), appointment of a personal representative and complete settlement of an estate under continuing supervision of the court (supervised administration) is provided for testators and persons interested in a decedent's estate, whether testate or intestate, who desire to use it.

(7) Unless supervised administration is sought and ordered, persons interested in estates (including personal representatives, whether appointed informally or after notice) may use an "in and out" relationship to the court so that any question or assumption relating to the estate, including the status of an estate as testate or intestate, matters relating to one or more claims, disputed titles, accounts of personal representatives, and distribution, may be resolved or established by adjudication after notice without necessarily subjecting the estate to the necessity of judicial orders in regard to other or further questions or assumptions.

(8) The status of a decedent in regard to whether he left a valid will or died intestate must be resolved by adjudication after notice in proceedings commenced within three years after his death. If not so resolved, any will probated informally becomes final, and if there is no such probate, the status of the decedent as intestate is finally determined, by a statute of limitations which bars probate and appointment unless requested within three years after death.

(9) Personal representatives appointed informally or after notice, and whether supervised or not, have statutory powers enabling them to collect, protect, sell, distribute and otherwise handle all steps in administration without further order of the court, except that supervised personal representatives may be subjected to special restrictions on power as endorsed on their letters.

(10) Purchasers from personal representatives and from distributees of personal representatives are protected so that adjudications regarding the testacy status of a decedent or any other question going to the propriety of a sale are not required in order to protect purchasers.

(11) Provisions protecting a personal representative who distributes without adjudication are included to make nonadjudicated settlements feasible.

(12) Statutes of limitation bar creditors of the decedent who fail to present claims within four months after legal advertising of the administration and unsecured claims not previously barred by nonclaim statutes are barred after three years from the decedent's death.

Overall, the system accepts the premise that the court's role in regard to probate and administration, and its relationship to personal representatives who derive their power from public appointment, is wholly passive until some interested person invokes its power to secure resolution of a matter. The state, through the court, should provide remedies which are suitable and efficient to protect any and all rights regarding succession, but should refrain from intruding into family affairs unless relief is requested, and limit its relief to that sought.

91A-3-101. Devolution of estate at death—restrictions. The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates. Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

History: En. 91A-3-101 by Sec. 1, Ch. 365, L. 1974.

91A-3-102. Necessity of order of probate for will. Except as provided in section 91A-3-1201, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the clerk, or an adjudication of probate by the court, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if (1) no court proceeding concerning the succession or administration of the estate has occurred, and

(2) either the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

History: En. 91A-3-102 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The basic idea of this section follows Section 85 of the Model Probate Code. The exception referring to section [91A-3-1201] relates to affidavit procedures which are authorized for collection of estates worth less than $5,000.

Section [91A-3-107] and various sections in Parts 3 and 4 of this [chapter] make it clear that a will may be probated without appointment of a personal representative, including any nominated by the will.

The requirement of probate stated here and the limitations on probate provided in [section 91A-3-108] mean that questions as to testacy may be eliminated simply by the running of time. Under these sections, an informally probated will cannot be questioned after the later of three years from the decedent's death or one year from the probate whether or not an executor was appointed, or, if an executor was appointed, without regard to whether the estate has been distributed. If the decedent is believed to have died without a will, the running of three years from death bars probate of a late-discovered will and so makes the assumption of intestacy conclusive.

The exceptions to the section (other than the exception relevant to small estates) are not intended to accommodate cases of late-discovered wills. Rather, they are designed to make the probate requirement inapplicable where circumstances led survivors of a decedent to believe that there was no point to probating a will of which they may have had knowledge. If any will was probated within three years of death, or if letters of administration were issued in this period, the exceptions to the section are inapplicable. If there has been no proceeding in probate, persons seeking to establish title by an unprobated will must show, with reference to the estate they claim, either that it has been possessed by those to whom it was devised or that it has been unknown to the decedent's heirs or devisees and not possessed by any.

It is to be noted, also, that devisees who are able to claim under one of the exceptions to this section may not obtain probate of the will or administration of the estate to assist them in their efforts to obtain the estate in question. The exceptions are to a rule which bars admission of a will into evidence, rather than to the section barring late probate and late appointment of personal representatives. Still, the exceptions should serve to prevent two "hard" cases which can be imagined readily. In one, a surviving spouse fails to seek probate of a will, giving her the entire estate of the decedent because she is informed or believes that all of her husband's property was held by them jointly, with right of survivorship. Later, it is discovered that she was mistaken as to the nature of her husband's title. The other case involves a devisee who sees no point to securing probate of a will in his favor because he is unaware of any estate. Subsequently, valuable rights of the decedent are discovered.

91A-3-103. Necessity of appointment for administration. Except as otherwise provided in sections 91A-4-101 through 91A-4-401, inclusive, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or clerk, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.

History: En. 91A-3-103 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section makes it clear that ap-

pointment by a public official is required before one can acquire the status of personal representative. "Qualification" is dealt with in section [91A-3-601]. "Letters" are the subject of section [91A-1-305]. Section [91A-3-701] is also related, since it deals with the time of accrual of duties and powers of personal representatives.

See [section 91A-3-108] for the time limit on requests for appointment of personal representatives.

In [Chapter 4, sections 91A-4-201 and 91A-4-207] permit a personal representative from another state to obtain the powers of one appointed locally by filing evidence of his authority with a local court.

91A-3-104. Claims against decedent—necessity of administration. No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by sections 91A-3-101 through 91A-3-1203. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in section 91A-3-1005 or from a former personal representative individually liable as provided in section 91A-3-1006. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

History: En. 91A-3-104 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This and sections of Part 8 [Chapter 3], are designed to force creditors of decedents to assert their claims against duly appointed personal representatives. Creditors of a decedent are interested persons who may seek the appointment of a personal representative (section [91A-3-301]). If no appointment is granted to another within 45 days after the decedent's death, a creditor may be eligible to be appointed if other persons with priority decline to serve or are ineligible (section [91A-3-203]). But, if a personal representative has been appointed and has closed the estate under circumstances which leave a creditor's claim unbarred, the creditor is permitted to enforce his claims against distributees, as well as against the personal representative if any duty owed to creditors under [sections 91A-3-807 or 91A-3-1003] has been breached. The methods for closing estates are outlined in sections [91A-3-1001 through 91A-3-1003]. Termination of appointment under sections [91A-3-608 et seq.] may occur though the estate is not closed and so may be irrelevant to the question of whether creditors may pursue distributees.

DECISIONS UNDER FORMER LAW

Hospital Expenses

In action to recover unpaid hospital expenses from decedent's heirs at law, who had distributed assets of decedent's estate without having administrator appointed, trial court improperly granted relief to plaintiff hospital since it could not sue upon its claim until it first presented such claim to administrator; thus, proper remedy would have been for hospital to apply for letters of administration as creditor, and hospital's attempted remedy circumvented statutory priorities for payment of debts. Daughters of Jesus v. Gee, 153 M 342, 457 P 2d 471.

91A-3-105. Proceedings affecting devolution and administration—jurisdiction of subject matter. Persons interested in decedents' estate may apply to the clerk for determination in the informal proceedings provided in sections 91A-3-301 through 91A-3-311 of this act, and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in sections 91A-3-401 through 91A-3-505 of this act. The district court has exclusive jurisdiction of all probate matters.

History: En. 91A-3-105 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uni-

form Probate Code as promulgated by the National Conference of Commissioners substitutes for the second sentence in the section, above, two sentences as follows: "The court has exclusive jurisdiction of formal proceedings to determine how decedents' estates subject to the laws of this state are to be administered, expended and distributed. The court has concurrent jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property alleged to belong to the estate, and of any action or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent."

Editorial Board Comment

This and other sections of [Chapter 3] contemplate a nonjudicial officer who will act on informal application and a judge who will hear and decide formal petitions. See section [91A-1-307] which permits the judge to perform or delegate the functions of the [clerk]. However, the primary purpose of [Chapter 3] is to describe functions to be performed by various public officials, rather than to prescribe how these responsibilities should be assigned within a given state or county. Hence, any of several alternatives to the organizational scheme assumed for purposes of this draft would be acceptable.

For example, a state might assign responsibility for maintenance of probate files and records, and for receiving and acting upon informal applications, to existing, limited power probate offices. Responsibility for hearing and deciding formal petitions would then be assigned to the court of general jurisdiction of each county or district.

If separate courts or officers are not feasible, it may be preferable to concentrate authority for allocating responsibility respecting formal and informal proceedings in the judge. To do so helps fix responsibility for the total operation of the office. This is the assumption of this draft.

It will be up to each adopting state to select the organizational arrangement which best meets its needs.

If the office with jurisdiction to hear and decide formal petitions is the county or district court of general jurisdiction, there will be little basis for objection to the broad statement of concurrent jurisdiction of this section. However, if a more specialized "estates" court is used, there may be pressure to prevent it from hearing negligence and other actions involving jury trials, even though it may be given unlimited power to decide other cases to which a personal representative is a party. A system for certifying matters involving jury trials to the general trial court could be provided, although the alternative of permitting the estates court to empanel juries where necessary might not be unworkable. In any event, the jurisdiction of the "estates" or "probate" court in regard to negligence litigation would only be concurrent with that of the general trial court. The important point is that the estates court, whatever it is called, should have unlimited power to hear and finally dispose of all matters relevant to determination of the extent of the decedent's estate and of the claims against it. The jury trial question is peripheral.

See the Comment to the next section regarding adjustments which might be made in the code by a state with a single court of general jurisdiction for each county or district.

91A-3-106. Proceedings within exclusive jurisdiction of court. In proceedings within the exclusive jurisdiction of the court where notice is required by this code or by rule, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with section 91A-1-401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

History: En. 91A-3-106 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The language in this and the preceding section which divides matters coming before the probate court between those within the court's "exclusive" jurisdiction and those within its "concurrent" jurisdiction would be inappropriate if probate matters were assigned to a branch of a single court of general jurisdiction. [See Compiler's Notes following section 91A-3-105.] The code could be adjusted to an assumption of a single court in various ways. Any adjusted version should contain a provision permitting the court to hear and settle certain kinds of matters after notice as provided in [91A-1-401]. It might be suitable to combine the sec-

ond sentences of [91A-1-305] and [91A-1-306] into a single section as follows:

"The court may hear and determine formal proceedings involving administration and distribution of decedents' estates after notice to interested persons in conformity with Section 1-401. Persons notified are bound though less than all interested persons may have been given notice."

An adjusted version also might provide:

"Subject to general rules concerning the proper location of civil litigation and jurisdiction of persons, the court (meaning the probate division) may hear and determine any other controversy concerning a succession or to which an estate, through a personal representative, may be a party."

The propriety of this sort of statement would depend upon whether questions of docketing and assignment, including the division of matters between co-ordinate branches of the court, should be dealt with by legislation.

91A-3-107. Scope of proceedings—proceedings independent—exception. Unless supervised administration as described in sections 91A-3-501 through 91A-3-505 is involved, (1) each proceeding before the court or clerk is independent of any other proceeding involving the same estate;

(2) petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this code, no petition is defective because it fails to embrace all matters which might then be the subject of a final order;

(3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and

(4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

History: En. 91A-3-107 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section and others in [Chapter 3] describe a system of administration of decedents' estates which gives interested persons control of whether matters relating to estates will become occasions for judicial orders. Sections [91A-3-501 through 91A-3-505] describe supervised administration, a judicial proceeding which is continuous throughout administration. It corresponds with the theory of administration of decedents' estates which prevails in many states. See, section 62, Model Probate Code. If supervised administration is not requested, persons interested in an estate may use combinations of the formal proceedings (order by judge after notice to persons concerned with the relief sought), informal proceedings (request for the limited response that nonjudicial personnel of the probate court are authorized to make in response to verified application) and filings provided in the remaining parts of [Chapter 3] to secure authority and protection needed to administer the estate. Nothing except self-interest will compel resort to the judge. When resort to the judge is necessary or desirable to resolve a dispute or to gain protection, the scope of the proceeding if not otherwise prescribed by the code is framed by the petition. The securing of necessary jurisdiction over interested persons in a formal proceeding is facilitated by sections [91A-3-106 and 91A-3-602]. [Section 91A-3-201] locates venue for all proceedings at the place where the first proceeding occurred.

91A-3-108. Probate, testacy and appointment proceedings—time limit—exception. No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three (3) years after the decedent's death, except (1) if a previous proceeding was dismissed because of doubt about

the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(2) appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within three (3) years after the conservator becomes able to establish the death of the protected person; and

(3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of twelve (12) months from the informal probate or three (3) years from the decedent's death.

These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate, nor do they limit the right of interested persons to commence informal probate or appointment proceedings or formal testacy or appointment proceedings at any time after three (3) years from the decedent's death if there have been no previous formal or informal probate or appointment proceedings commenced in respect of that decedent. In cases under (1) or (2) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death.

History: En. 91A-3-108 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The next to last sentence in the corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners reads as follows: "These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate."

Editorial Board Comment

This section establishes a basic limitation period of three years within which it may be determined whether a decedent left a will and to commence administration of his estate. But, an exception assures that heirs will have at least one year after an informal probate to initiate a contest and to secure administration of the estate as intestate.

If no will is probated within three years from death, the section has the effect of making the assumption of intestacy final. If a will has been informally probated within the period, the section has the effect of making the informal probate conclusive after three years or within twelve months from informal probate, if later. Heirs or devisees can protect themselves against change within the three years of assumption concerning whether the decedent left a will or died intestate by bringing a formal proceeding shortening the period to that described in sections [91A-3-412 and 91A-3-413].

A personal representative who has been appointed under an assumption concerning testacy which may be reversed in the three-year period if there has been no formal proceeding, is protected by section [91A-3-703]. It relieves a personal representative of liability for surcharge for certain distributions made pursuant to an informally probated will, or under authority of informally issued letters of administration. Distributees who receive an estate distributed before the three-year period expires where there has been no formal determination accelerating the time for certainty, remain potentially liable to persons determined to be entitled by formal proceedings instituted within the basic period under sections [91A-3-909 and 91A-3-1007].

Purchasers from personal representatives and distributees may be protected without regard to whether the three-year period has run. See sections [91A-3-713 and 91A-3-910].

All creditors' claims are barred after three years from death. See section [91A-3-803(1)(b)]. Because of this, and since any possibility that letters may be issued

at any time would be seen as a "cloud" on the title of heirs or devisees otherwise secure under [91A-3-101], the three-year statute of limitations applies to bar appointment of a personal representative after the basic period has passed. Section 83 of the Model Probate Code barred probate and administration after five years, and other statutes imposing time limits on these proceedings are cited at pp. 307-310 of Model Probate Code. A qualification covers the situation where a closed administration is sought to be reopened to administer after-discovered assets. See section [91A-3-1009]. If there has been no probate or appointment within three years, and if either exception to section [91A-3-102] applies, devisees under a late-discovered will may use a will to establish their title. But, they may not secure probate of the will, nor may they obtain appointment of a personal representative. The same pattern applies to heirs who, in a case where there has been no administration, discover assets after the three-year period has run. Such persons will not be able to protect purchasers with the ease of those interested in an estate where a personal representative has been appointed.

The basic premise underlying all of these time provisions is that interested persons who want to assume the risks implicit in the three-year period of limitations should be provided legitimate means by which they can do so. At the same time, parties should be afforded ample opportunity for earlier protection if they want it.

DECISIONS UNDER FORMER LAW

Petition Contesting Will

Petition contesting will was properly dismissed where the citation was not issued within the statutory period following admission of will to probate. In re Estate of Willner, 147 M 538, 416 P 2d 24.

91A-3-109. Statutes of limitation on decedent's cause of action. No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than four (4) months after death. A cause of action which, but for this section, would have been barred less than four (4) months after death, is barred after four (4) months unless tolled.

History: En. 91A-3-109 by Sec. 1, Ch. 365, L. 1974.

Part 2—Venue for Probate and Administration—Priority to Administer—Demand for Notice

Section
91A-3-201. Venue for first and subsequent estate proceedings—location of property.
91A-3-202. Appointment or testacy proceedings—conflicting claim of domicile in another state.
91A-3-203. Priority among persons seeking appointment as personal representative.
91A-3-204. Demand for notice of order or filing concerning decedent's estate.

91A-3-201. Venue for first and subsequent estate proceedings—location of property. (1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(a) in the county where the decedent had his domicile at the time of his death; or

(b) if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.

(2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in section 91A-1-303 or (3) of this section.

(3) If the first proceeding was informal, on application of an inter-

ested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(4) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving nondomiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

History: En. 91A-3-201 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Sections [91A-1-303 and 91A-3-201] cover the subject of venue for estate proceedings. Sections [91A-3-202, 91A-3-301, 91A-3-303 and 91A-3-309] also may be relevant.

Provisions for transfer of venue appear in section [91A-1-303].

The interplay of these several sections may be illustrated best by examples:

(1) A formal probate or appointment proceeding is initiated in A County. Interested persons who believe that venue is in B County rather than A County must raise their question about venue in A County, because [91A-1-303] gives the court in which the proceeding is first commenced authority to resolve disputes over venue. If the court in A County erroneously determines that it has venue, the remedy is by appeal.

(2) An informal probate or appointment application is filed and granted without notice in A County. If interested persons wish to challenge the registrar's determination of venue, they may not simply file a formal proceeding in the county of their choice and thus force the proponent in the prior proceeding to debate the question of venue in their county [section 91A-3-201(2)] locates the venue of any subsequent proceeding where the first proceeding occurred. The function of [subsection (2)] is obvious when one thinks of subsequent proceedings as those which relate to claims, or accounts, or to efforts to control a personal representative. It is less obvious when it seems to locate the forum for squabbles over venue at the place accepting the first informal application. Still, the applicant seeking an informal order must be careful about the statements he makes in his application because he may be charged with perjury under section [91A-1-309] if he is deliberately inaccurate. Moreover, the registrar must be satisfied that the allegations in the application support a finding of venue. [Section 91A-3-201(3)] provides a remedy for one who is upset about the venue-locating impact of a prior order in an informal proceeding and who does not wish to engage in full litigation about venue in the forum chosen by the other interested person unless he is forced to do so. Using it, he may succeed in getting the A County court to transfer the proceedings to the county of his choice. He would be well advised to initiate formal proceedings if he gets the chance, for if he relies on informal proceedings, he, too, may be "bumped" if the judge in B County agrees with some movant that venue was not in B County.

(3) If the decedent's domicile was not in the state, venue is proper under [sections 91A-3-201 and 91A-1-303] in any county where he had assets.

One contemplating starting administration because of the presence of local assets should have several other sections of the code in mind. First, by use of the recognition provisions in [chapter 4], it may be possible to avoid administration in any state other than that in which the decedent was domiciled. Second, section [91A-3-203] may apply to give priority for local appointment to the representative appointed at domicile. Third, under section [91A-3-309], informal appointment proceedings in this state will be dismissed if it is known that a personal representative has been previously appointed at domicile.

DECISIONS UNDER FORMER LAW

Residence of Decedent

County where intestate decedent was domiciled had sole and exclusive jurisdiction over the estate and where order from another county recited the correct domicile but nevertheless issued letters of administration, the order was void on its face and subject to both collateral and direct attack. In re Estate of Brown, 156 M 170, 477 P 2d 882.

91A-3-202. Appointment or testacy proceedings—conflicting claim of domicile in another state. If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this state, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state must stay, dismiss, or permit suitable amendment in, the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this state.

History: En. 91A-3-202 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section is designed to reduce the possibility that conflicting findings of domicile in two or more states may result in inconsistent administration and distribution of parts of the same estate. Section [91A-3-408] dealing with the effect of adjudications in other states concerning testacy supports the same general purpose to use domiciliary law to unify succession of property located in different states.

Whether testate or intestate, succession should follow the presumed wishes of the decedent whenever possible. Unless a decedent leaves a separate will for the portion of his estate located in each different state, it is highly unlikely that he would want different portions of his estate subject to different rules simply because courts reach conflicting conclusions concerning his domicile. It is pointless to debate whether he would prefer one or the other of the conflicting rules, when the paramount inference is that the decedent would prefer that his estate be unified under either rule rather than wasted in litigation.

The section adds very little to existing law. If a previous estate proceeding in State A has determined that the decedent was a domiciliary of A, persons who were personally before the court in A would be precluded by the principles of res judicata or collateral estoppel (and full faith and credit) from relitigating the issue of domicile in a later proceeding in State B. Probably, it would not matter in this setting that domicile was a jurisdictional fact. Stoll v. Gottlieb (1938) 305 U.S. 165, 83 L.Ed. 104, 59 S.Ct. 134. Even if the parties to a present proceeding were not personally before the court in an earlier proceeding in State A involving the same decedent, the prior judgment would be binding as to property subject to the power of the courts in A, on persons to whom due notice of the proceeding was given. Riley v. New York Trust Co. (1942) 315 U.S. 343, 86 L.Ed. 885, 62 S.Ct. 608; Mullane v. Central Hanover Bank and Trust Co. (1950) 339 U.S. 306, 94 L.Ed. 865, 70 S.Ct. 652.

Where a court learns that parties before it are also parties to previously initiated litigation involving a common question, traditional judicial reluctance to deciding unnecessary questions, as well as considerations of comity, are likely to lead it to delay the local proceedings to await the result in the other court. A somewhat more troublesome question is involved when one of the parties before the local court manifests a determination not to appear personally in the prior initiated proceedings so that he can preserve his ability to litigate contested points in a more friendly, or convenient, forum. But, the need to preserve all possible advantages available to particular litigants should be subordinated to the decedent's probable wish that his estate not be wasted in unnecessary litigation. Thus, the section requires that the local claimant either initiate litigation in the forum of his choice before litigation is started somewhere else, or accept the necessity of contesting unwanted views concerning the decedent's domicile offered in litigation pending elsewhere.

It is to be noted, in this connection, that the local suitor always will have a chance to contest the question of domicile in the other state. His locally initiated proceedings may proceed to a valid judgment accepting his theory of the case unless parties who would oppose him appear and defend on the theory that the domicile question is currently being litigated elsewhere. If the litigation in the other state has proceeded to judgment, section [91A-3-408] rather than the instant section will govern. If this section applies, it will mean that the foreign proceedings are still pending, so that the local person's contention concerning domicile can be made therein even though until the defense of litigation elsewhere is offered in the local proceedings, he may not have been notified of the foreign proceeding.

91A-3-203. Priority among persons seeking appointment as personal representative. (1) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(a) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;

(b) the surviving spouse of the decedent who is a devisee of the decedent;

(c) other devisees of the decedent;

(d) the surviving spouse of the decedent;

(e) other heirs of the decedent;

(f) public administrator;

(g) forty-five (45) days after the death of the decedent, any creditor.

(2) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in (1) apply except that

(a) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;

(b) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value, or, in default of this accord any suitable person.

(3) A person entitled to letters under (b) through (e) of (1) above, may nominate a qualified person to act as personal representative. Any person entitled to letters may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two (2) or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment. If they are unable to concur in nominating another to act for them or in applying for appointment, the court may appoint any qualified person.

(4) Conservators of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

(5) Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

(6) No person is qualified to serve as a personal representative who is:

(a) under the age of eighteen (18);

(b) a person whom the court finds unsuitable in formal proceedings.

(7) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(8) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977.

Editorial Board Comment

The priorities applicable to informal proceedings are applicable to formal proceedings. However, if the proceedings are formal, a person with a substantial interest may object to the selection of one having priority other than because of will provisions. The provision for majority approval which is triggered by such a protest can be handled in a formal proceeding since all interested persons will be before the court, and a judge capable of handling discretionary matters, will be involved.

In considering this section as it relates to a devise to a trustee for various beneficiaries, it is to be noted that "interested persons" is defined by [section 91A-1-201 (21)] to include fiduciaries. Also [sections 91A-1-403(2) and 91A-3-912] show a purpose to make trustees serve as representatives of all beneficiaries. The provision in [(4)] is consistent.

If a state's statutes recognize a public administrator or public trustee as the appropriate agency to seek administration of estates in which the state may have an interest, it would be appropriate to indicate in this section the circumstances under which such an officer may seek administration. If no officer is recognized locally, the state could claim as heir by virtue of [section 91A-2-105].

Subsection [(7)] was inserted in connection with the decision to abandon the effort to describe ancillary administration in [chapter 4]. Other provisions in [chapter 3] which are relevant to administration of assets in a state other than that of the decedent's domicile are [section 91A-1-301] (territorial effect), [section 91A-3-201] (venue), [section 91A-3-308] (informal appointment for nonresident decedent delayed thirty days), [section 91A-3-309] (no informal appointment here if a representative has been appointed at domicile), [section 91A-3-815] (duty of personal representative where administration in more than one state) and [sections 91A-4-201 through 91A-4-205] (local recognition of foreign personal representatives).

Amendments

The 1977 amendment added the last sentence in subsection (3).

DECISIONS UNDER FORMER LAW

Causes for Disqualifying

Fact that named executors might have used undue influence in obtaining property of testator before death, thereby giving rise to claim in behalf of estate against executors, was not in itself evidence of want of integrity such as would disqualify them. In re Estate of Graf, 150 M 577, 437 P 2d 371.

Creditor as Administrator

On claim for unpaid hospital expenses of decedent, proper remedy for hospital would have been to apply for letters of administration as creditor. Daughters of Jesus v. Gee, 153 M 342, 457 P 2d 471.

Duty of Court

Former statute dealing with issuance of letters testamentary gave power to nominate executor to testator, so that court was required to appoint person named in will as executor unless he was incompetent under statute. In re Estate of Graf, 150 M 577, 437 P 2d 371.

91A-3-204. Demand for notice of order or filing concerning decedent's estate. Any person desiring notice of any order or filing pertaining to a decedent's estate in which he has a financial or property interest, may file a demand for notice with the court at any time after the death of the decedent stating the name of the decedent, the nature of his interest in the estate, and the demandant's address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative if one has been

appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in section 91A-1-401 to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

History: En. 91A-3-204 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The notice required as the result of demand under this section is regulated as far as time and manner requirements are concerned by section [91A-1-401].

This section would apply to any order which might be made in a supervised administration proceeding.

Part 3—Informal Probate and Appointment Proceedings

Section

91A-3-301. Informal probate or appointment proceedings—application—contents.
91A-3-302. Informal probate—duty of clerk of court—effect of informal.
91A-3-303. Informal probate—proof and findings required.
91A-3-304. Informal probate unavailable in certain cases.
91A-3-305. Informal probate—clerk not satisfied.
91A-3-306. Informal probate—notice requirements.
91A-3-307. Informal appointment proceedings—delay in order—duty of clerk—effect of appointment.
91A-3-308. Informal appointment proceedings—proof and findings required.
91A-3-309. Informal appointment proceedings—clerk not satisfied.
91A-3-310. Informal appointment proceedings—notice requirements.
91A-3-311. Informal appointment proceedings—unavailable in certain cases.

91A-3-301. Informal probate or appointment proceedings—application—contents. Applications for informal probate or informal appointment shall be directed to the clerk, and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the following information:

(1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special, ancillary or successor representative, shall contain the following:

(a) a statement of the interest of the applicant;

(b) the name and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(c) if the decedent was not domiciled in the state at the time of his death, a statement showing venue;

(d) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(e) a statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

(2) An application for informal probate of a will shall state the following in addition to the statements required by (1):

(a) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(b) that the applicant, to the best of his knowledge, believes the will to have been validly executed;

(c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will;

(d) that the time limit for informal probate as provided in this article has not expired either because three (3) years or less have passed since the decedent's death, or, if more than three (3) years from death have passed, that circumstances as described by section 91A-3-108 authorizing tardy probate have occurred.

(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.

(4) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by (1):

(a) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under section 91A-1-301, or, a statement why any such instrument of which he may be aware is not being probated;

(b) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 91A-3-203.

(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 91A-3-610(3), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Forcing one who seeks informal probate or informal appointment to make oath

before a public official concerning the details required of applications should deter persons who might otherwise misuse the no-notice feature of informal proceedings. The application is available as a part of the public record. If deliberately false representation is made, remedies for fraud will be available to injured persons without specified time limit (see [Chapter 1]). The section is believed to provide important safeguards that may extend well beyond those presently available under supervised administration for persons damaged by deliberate wrongdoing.

Section [91A-1-309] deals with verification.

91A-3-302. Informal probate—duty of clerk of court—effect of informal. Upon receipt of an application requesting informal probate of a will, the clerk, upon making the findings required by section 91A-3-303 shall issue a written statement of informal probate if at least one hundred twenty (120) hours have elapsed since the decedent's death. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

History: En. 91A-3-302 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Model Probate Code Sections 68 and 70 contemplate probate by judicial order as the only method of validating a will. This "umbrella" section and the sections it refers to describe an alternative procedure called "informal probate." It is a statement of probate by the [clerk]. A succeeding section describes cases in which informal probate is to be denied. "Informal probate" is subjected to safeguards which seem appropriate to a transaction which has the effect of making a will operative and which **may** be the only official reaction concerning its validity. "Informal probate," it is hoped, will serve to keep the simple will which generates no controversy from becoming involved in **truly** judicial proceedings. The procedure is very much like "probate in common form" as it is known in England and some states.

91A-3-303. Informal probate—proof and findings required. (1) In an informal proceeding for original probate of a will, the clerk shall determine whether:

(a) the application is complete;

(b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(c) the applicant appears from the application to be an interested person as defined in section 91A-1-201(21);

(d) on the basis of the statements in the application, venue is proper;

(e) an original, duly executed and apparently unrevoked will is in the clerk's possession;

(f) any notice required by section 91A-3-204 has been given and that the application is not within section 91A-3-304; and

(g) it appears from the application that the time limit for original probate has not expired.

(2) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or except as provided in subsection (4) below, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 91A-2-502, 91A-2-503 or 91A-2-506 have been met shall be

probated without further proof. In other cases the clerk may assume execution if the will appears to be properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(4) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(5) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (1) above, may be probated in this state upon receipt by the clerk of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

History: En. 91A-3-303 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 516, L. 1975.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners substitutes for the last sentence in the first paragraph of subsection (3) and subdivisions (a) to (c) thereof the following language: "In other cases, the Registrar may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will."

Editorial Board Comment

The purpose of this section is to permit informal probate of a will which from a simple attestation clause, appears to have been executed properly. It is not necessary that the will be notarized as is the case with "pre-proved" wills in some states. If a will is "pre-proved" as provided in [Chapter 2], it will, of course, "appear" to be well executed and include the recital necessary for easy probate here. If the instrument does not contain a proper recital by attesting witnesses, it may be probated informally on the strength of an affidavit by a person who can say what occurred at the time of execution.

Except where probate or its equivalent has occurred previously in another state, informal probate is available only where an original will exists and is available to be filed. Lost or destroyed wills must be established in formal proceedings. See section [91A-3-402]. Pendency of formal probate proceedings blocks under section [91A-3-401].

Amendments

The 1975 amendment deleted "and that it is self-proved as provided by section 91A-2-504" before "shall be probated without further proof" at the end of the first sentence of subsection (3); and substituted the second sentence of subsection (3) for: "In other cases the clerk shall admit the will to probate on the following proof:

"(a) on the testimony of one of the subscribing witnesses that the will was executed as required by this code and that the testator was of sound mind at the time of its execution;

"(b) if it appears at the time of the filing of the application to have the will informally admitted to probate that none of the subscribing witnesses reside in the county or are capable of appearing and that the sworn or affirmed statement of one of the witnesses to the will has been taken or can be taken within the state within the next ten (10) days, the clerk shall admit the will to probate on the sworn or affirmed written statement of such witness that he has examined the original or a photostatic copy of the will, that he recognizes it as the will of the decedent witnessed by him on the date stated, that the will was executed in all particulars as required by law and that the testator was of sound mind at the time;

"(c) if none of the subscribing witnesses reside in the county and are capable of testifying at the time of the application for informal probate and the execution of the will cannot be proved under either of the foregoing subdivisions, the clerk may accept the sworn or affirmed statement or affidavit of any person having knowledge of the circumstances of the execution, and may accept proof of the handwriting of the testator and of the subscribing witnesses or any of them."

91A-3-304. Informal probate unavailable in certain cases. Applications for informal probate which relate to one (1) or more of a known series of testamentary instruments (other than wills and codicils), the latest of which does not expressly revoke the earlier, shall be declined.

History: En. 91A-3-304 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The [clerk] handles the informal proceeding, but is required to decline applications in certain cases where circumstances suggest that formal probate would provide desirable safeguards.

91A-3-305. Informal probate—clerk not satisfied. If the clerk is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 91A-3-303 and 91A-3-304 or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

History: En. 91A-3-305 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The purpose of this section is to recognize that the [clerk] should have some authority to deny probate to an instrument even though all stated statutory requirements may be said to have been met. Denial of an application for informal probate cannot be appealed. Rather, the proponent may initiate a formal proceeding so that the matter may be brought before the judge in the normal way for contested matters.

91A-3-306. Informal probate—notice requirements. The moving party must give notice as described by section 91A-1-401 of his application for informal probate (1) to any person demanding it pursuant to section 91A-3-204; and

(2) to any personal representative of the decedent whose appointment has not been terminated.

No other notice of informal probate is required.

History: En. 91A-3-306 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This provision assumes that there will be a single office within each county or other area of jurisdiction of the probate court which can be checked for demands for notice relating to estates in that area. If there are or may be several registrars within a given area, provision would need to be made so that information concerning demands for notice might be obtained from the chief registrar's place of business.

91A-3-307. Informal appointment proceedings—delay in order—duty of clerk—effect of appointment. (1) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 91A-3-614, if at least one hundred twenty (120) hours have elapsed since the decedent's death, the clerk, after making the findings required by section 91A-3-308, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a nonresident, the clerk shall delay the order of appointment until thirty (30) days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this state.

(2) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment.

An appointment, and the office of personal representative created thereby, is subject to termination as provided in sections 91A-3-608 through 91A-3-612, but is not subject to retroactive vacation.

History: En. 91A-3-307 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Section [91A-3-703] describes the duty of a personal representative and the protection available to one who acts under letters issued in informal proceedings. The provision requiring a delay of thirty days from death before appointment of a personal representative for a nonresident decedent is new. It is designed to permit the first appointment to be at the decedent's domicile. See section [91A-3-203].

91A-3-308. Informal appointment proceedings—proof and findings required. (1) In informal appointment proceedings, the clerk must determine whether:

(a) the application for informal appointment of a personal representative is complete;

(b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(c) the applicant appears from the application to be an interested person as defined in section 91A-1-201(21);

(d) on the basis of the statements in the application, venue is proper;

(e) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;

(f) any notice required by section 91A-3-204 has been given;

(g) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.

(2) Unless section 91A-3-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in section 91A-3-610(3) has been appointed in this or another county of this state, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

History: En. 91A-3-308 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Sections [91A-3-614 and 91A-3-615] make it clear that a special administrator may be appointed to conserve the estate during any period of delay in probate of a will. Even though the will has not been approved, section [91A-3-614] gives priority for appointment as special administrator to the person nominated by the will which has been offered for probate. Section [91A-3-203] governs priorities for appointment. Under it, one or more of the same class may receive priority through agreement of the others.

The last sentence of the section is designed to prevent informal appointment of a personal representative in this state when a personal representative has been previously appointed at the decedent's domicile. Sections [91A-4-204 and 91A-4-205] may make local appointment unnecessary. Appointment in formal proceedings is possible, however.

91A-3-309. Informal appointment proceedings—clerk not satisfied. If the clerk is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the

requirements of sections 91A-3-307 and 91A-3-308, or for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

History: En. 91A-3-309 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Authority to decline an application for appointment is conferred on the [clerk]. Appointment of a personal representative confers broad powers over the assets of a decedent's estate. The process of declining a requested appointment for unclassified reasons should be one which a [clerk] can use quickly and informally.

91A-3-310. Informal appointment proceedings—notice requirements. The moving party must give notice as described by section 91A-1-401 of his intention to seek an appointment informally: (1) to any person demanding it pursuant to section 91A-3-204; and

(2) to any person having a prior or equal right to appointment not waived in writing and filed with the court. No other notice of an informal appointment proceeding is required.

History: En. 91A-3-310 by Sec. 1, Ch. 365, L. 1974.

91A-3-311. Informal appointment proceedings—unavailable in certain cases. If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state, and which is not filed for probate in this court, the clerk shall decline the application.

History: En. 91A-3-311 by Sec. 1, Ch. 365, L. 1974.

Part 4—Formal Testacy and Appointment Proceedings

Section

91A-3-401. Formal testacy proceedings—nature—when commenced.
91A-3-402. Formal testacy or appointment proceedings—petition—contents.
91A-3-403. Formal testacy proceeding; notice of hearing on petition.
91A-3-404. Formal testacy proceedings—written objections to probate.
91A-3-405. Formal testacy proceedings—uncontested cases—hearings and proof.
91A-3-406. Formal testacy proceedings—contested cases—testimony of attesting witnesses.
91A-3-407. Formal testacy proceedings—burdens in contested cases.
91A-3-408. Formal testacy proceedings—will construction—effect of final order in another jurisdiction.
91A-3-409. Formal testacy proceedings—order—foreign will.
91A-3-410. Formal testacy proceedings—probate of more than one instrument.
91A-3-411. Formal testacy proceedings—partial intestacy.
91A-3-412. Formal testacy proceedings—effect of order—vacation.
91A-3-413. Formal testacy proceedings—vacation of order for other cause.
91A-3-414. Formal proceedings regarding appointment of personal representative.

91A-3-401. Formal testacy proceedings—nature—when commenced. A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in section 91A-3-402(1) in which he requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of

a pending application, or a petition for an order that the decedent died intestate.

A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

During the pendency of a formal testacy proceeding, the clerk shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

History: En. 91A-3-401 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The word "testacy" is used to refer to the general status of a decedent in regard to wills. Thus, it embraces the possibility that he left no will, any question of which of several instruments is his valid will, and the possibility that he died intestate as to a part of his estate, and testate as to the balance. See section [91A-1-201(44)].

The formal proceedings described by this section may be: (i) an original proceeding to secure "solemn form" probate of a will; (ii) a proceeding to secure "solemn form" probate to corroborate a previous informal probate; (iii) a proceeding to block a pending application for informal probate, or to prevent an informal application from occurring thereafter; (iv) a proceeding to contradict a previous order of informal probate; (v) a proceeding to secure a declaratory judgment of intestacy and a determination of heirs in a case where no will has been offered. If a pending informal application for probate is blocked by a formal proceeding, the applicant may withdraw his application and avoid the obligation of going forward with prima facie proof of due execution. See section [91A-3-407]. The petitioner in the formal proceedings may be content to let matters stop there, or he can frame his petition, or amend, so that he may secure an adjudication of intestacy which would prevent further activity concerning the will.

If a personal representative has been appointed prior to the commencement of a formal testacy proceeding, the petitioner must request confirmation of the appointment to indicate that he does not want the testacy proceeding to have any effect on the duties of the personal representative, or refrain from seeking confirmation, in which case, the proceeding suspends the distributive power of the previously appointed representative. If nothing else is requested or decided in respect to the personal representative, his distributive powers are restored at the completion of the proceeding, with section [91A-3-703] directing him to abide by the will. "Distribute" and "distribution" do not include payment of claims. See [sections 91A-1-201(11), 91A-3-807 and 91A-3-902].

DECISIONS UNDER FORMER LAW

Hearing Required

Issues of fact affecting the validity of a will are to be tried; where proponent of will submitted affidavit that no hearing had been held, and the record contained no minute entry indicating that a hearing had been held, the appeals court would not indulge in the presumption that pro-

ceedings had been held. In re Craddock's Estate, — M —, 530 P 2d 483.

Second Hearing

Proponent of holographic will was entitled to full hearing before substituted judge, after original petition for probate of will had been heard by judge who was subsequently disqualified and no rulings had been made on the merits and no transcript of the first hearing had been prepared. In re Craddock's Estate, — M —, 530 P 2d 483.

91A-3-402. Formal testacy or appointment proceedings—petition—contents. (1) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section. A petition for formal probate of a will

(a) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs,

(b) contains the statements required for informal applications as stated in the five (5) subparagraphs under section 91A-3-301(1), the statements required by subparagraphs (b) and (c) of section 91A-3-301(2), and

(c) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.

If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.

(2) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by (1) and (4) of section 91A-3-301 and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by subparagraph (b) of section 91A-3-301(4) above may be omitted.

History: En. 91A-3-402 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

If a petitioner seeks an adjudication that a decedent died intestate, he is required also to obtain a finding of heirship. A formal proceeding which is to be effective on all interested persons must follow reasonable notice to such persons. It seems desirable to force the proceedings through a formal determination of heirship because the finding will bolster the order, as well as preclude later questions that might arise at the time of distribution.

Unless an order of supervised administration is sought, there will be little occasion for a formal order concerning appointment of a personal representative which does not also adjudicate the testacy status of the decedent. If a formal order of appointment is sought because of disagreement over who should serve, section [91A-3-414] describes the appropriate procedure.

The words "otherwise unavailable" in [the last paragraph of subsection (1)] are not intended to be read restrictively.

Section [91A-1-309] expresses the verification requirement which applies to all documents filed with the courts.

DECISIONS UNDER FORMER LAW

Lost Will

Those seeking to introduce a lost will had burden of proof that will was actually in existence or in existence in contemplation of law at time of decedent's death; if will was last seen in custody of deceased, petitioners were required to present clear, satisfactory and convincing

evidence to overcome the rebuttable presumption that deceased destroyed the will. In re Estate of Neuman, — M —, 518 P 2d 800.

Where three witnesses testified as to contents of a lost will but only the attorney who prepared it had actually seen the will and could recall with specificity its provisions, and where there was testimony that testator intended to change his will, the presumption of destruction with intent to revoke was not overcome, and the will was not entitled to probate. Matter of Estate of Spear, — M —, 546 P 2d 257.

91A-3-403. Formal testacy proceeding; notice of hearing on petition. (1) Upon commencement of a formal testacy proceeding, the court or clerk shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 91A-1-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under section 91A-3-204 of this code.

Notice shall be given to the following persons: the surviving spouse, children, and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(2) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on said petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(a) by inserting in one (1) or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(b) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(c) by engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

History: En. 91A-3-403 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 3, Ch. 516, L. 1975.

Editorial Board Comment

Provisions governing the time and manner of notice required by this section and other sections in the code are contained in [91A-1-401].

The provisions concerning search for the alleged decedent are derived from Model Probate Code, Section 71.

Testacy proceedings involve adjudications that no will exists. Unknown wills as well as any which are brought to the attention of the court are affected. Persons with potential interests under unknown wills have the notice afforded by death and by publication. Notice requirements extend also to persons named in a will that is known to the petitioners to exist, irrespective of whether it has been probated or offered for formal or informal probate, if their position may be affected adversely by granting of the petition. But, a rigid statutory requirement relating to such persons might cause undue difficulty. Hence, the statute merely provides that the petitioner may notify other persons.

It would not be inconsistent with this

section for the court to adopt rules designed to make petitioners exercise reasonable diligence in searching for as yet undiscovered wills.

Section [91A-3-106] provides that an order is valid as to those given notice, though less than all interested persons were given notice. Section [91A-3-1001 (2)] provides a means of extending a testacy order to previously unnotified persons in connection with a formal closing.

Amendments

The 1975 amendment inserted "or clerk" in the first sentence of subsection (1).

91A-3-404. Formal testacy proceedings—written objections to probate. Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

History: En. 91A-3-404 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Model Probate Code section 72 requires a contestant to file written objections to any will he would oppose. The provision prevents potential confusion as to who must file what pleading that can arise from the notion that the probate of a will is in rem. The petition for probate of a revoking will is sufficient warning to proponents of the revoked will.

91A-3-405. Formal testacy proceedings—uncontested cases—hearings and proof. If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 91A-3-409 have been met, or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one (1) of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

History: En. 91A-3-405 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

For various reasons, attorneys handling estates may want interested persons to be gathered for a hearing before the court on the formal allowance of the will. The court is not required to conduct a hearing, however.

If no hearing is required, uncontested formal probates can be completed on the strength of the pleadings. There is no good reason for summoning attestors when no interested person wants to force the production of evidence on a formal probate. Moreover, there seems to be no valid distinction between litigation to establish a will, and other civil litigation, in respect to whether the court may enter judgment on the pleadings.

91A-3-406. Formal testacy proceedings—contested cases—testimony of attesting witnesses. (1) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one (1) of the attesting witnesses, if within the state competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(2) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

History: En. 91A-3-406 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Model Probate Code section 76, combined with section 77, substantially unchanged. The self-proved will is described

in [Chapter 2]. See section [91A-2-504]. The "conclusive presumption" described here would foreclose questions such as whether the witnesses signed in the presence of the testator. It would not preclude proof of undue influence, lack of testamentary capacity, revocation or any relevant proof that the testator was unaware of the contents of the document. The balance of the section is derived from Model Probate Code sections 76 and 77.

91A-3-407. Formal testacy proceedings—burdens in contested cases. In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

History: En. 91A-3-407 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section is designed to clarify the law by stating what is believed to be a fairly standard approach to questions concerning burdens of going forward with evidence in will contest cases.

DECISIONS UNDER FORMER LAW

Undue Influence—Burden of Proof

Contestant had burden of showing undue influence. In re Maricich's Estate, 145 M 146, 400 P 2d 873.

Undue Influence—Evidence

Substantial evidence of undue influence was shown where beneficiary under a second will was never close to the testator until learning of his bank account, and importuned upon testator while he was in a weakened condition, so that testator rejected his friends. In re Maricich's Estate, 145 M 146, 400 P 2d 873.

Directed verdict upholding contested will was improper where there was evidence that testator was in a long period of declining physical and mental health due to terminal cancer and sedation, was influenced by a mutual fund salesman, and executed four wills within a six-month period, all of them disinheriting his natural children, making dispositions at great variance with previous wills, and tending to erode the estate. Estate of Hall v. Milkovich, 158 M 438, 492 P 2d 1388, distinguishing In re Estate of Cocanougher, 141 M 16, 375 P 2d 1009 and — M —, 515 P 2d 368.

Hospital records of testator's terminal illness, during which he executed contested will, were relevant on issue of testamentary capacity and should have been admitted in will contest. Estate of Hall v. Milkovich, 158 M 438, 492 P 2d 1388.

Evidence that testator devised bulk of his estate to charitable institution and that public administratrix who had drafted will was named as executor of estate and that her fee was set at a higher figure by statute than that which a relative or other ordinary person would receive as executor was insufficient to set aside directed verdict allowing probate of will because evidence did not disclose that undue influence was actually exercised and that such influence resulted in testamentary provisions which were not those of the testator's will but those of the parties exercising such influence. Wallin v. Kinyon Estate, — M —, 519 P 2d 1236.

Undue Influence—What Constitutes

In considering undue influence, court could take into account confidential relationship of person attempting to influence testator, testator's physical and mental condition as it affected his ability to withstand influence, the unnaturalness of the disposition, and the demands made upon the testator in light of the circumstances. In re Maricich's Estate, 145 M 146, 400 P 2d 873.

91A-3-408. Formal testacy proceedings—will construction—effect of final order in another jurisdiction. A final order of a court of another

state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made.

History: En. 91A-3-408 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section is designed to extend the effect of final orders of another jurisdiction of the United States. It should not be read to restrict the obligation of the local court to respect the judgment of another court when parties who were personally before the other court also are personally before the local court. An "authenticated copy" includes copies properly certified under the full faith and credit statute. If conflicting claims of domicile are made in proceedings which are commenced in different jurisdictions, section [91A-3-202] applies. This section is framed to apply where a formal proceeding elsewhere has been previously concluded. Hence, if a local proceeding is concluded before formal proceedings at domicile are concluded, local law will control.

Informal proceedings by which a will is probated or a personal representative is appointed are not proceedings which must be respected by a local court under either section [91A-3-202] or this section.

Nothing in this section bears on questions of what assets are included in a decedent's estate.

This section adds nothing to existing law as applied to cases where the parties before the local court were also personally before the foreign court, or where the property involved was subject to the power of the foreign court. It extends present law so that, for some purposes, the law of another state may become binding in regard to due execution or revocation of wills controlling local land, and to questions concerning the meaning of ambiguous words in wills involving local land. But, choice of law rules frequently produce a similar result. See § 240 Restatement of the Law, Second: Conflict of Laws, p. 73, Proposed Official Draft III, 1969.

This section may be easier to justify than familiar choice of law rules, for its application is limited to instances where the protesting party has had notice of, and an opportunity to participate in, previous litigation resolving the question he now seeks to raise.

91A-3-409. Formal testacy proceedings — order — foreign will. After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by section 91A-3-108, it shall determine the decedent's domicile at death, his heirs and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 91A-3-612. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death, may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

History: En. 91A-3-409 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Model Probate Code section 80(a), slightly changed. If the court is not satisfied that the alleged decedent is dead, it may permit amendment of the proceeding so that it would become a proceeding to protect the estate of a missing and therefore "disabled" person. See [Chapter 5] of this code.

91A-3-410. Formal testacy proceedings—probate of more than one instrument. If two (2) or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one (1) instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one (1) instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 91A-3-412.

History: En. 91A-3-410 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Except as otherwise provided in section [91A-3-412], an order in a formal testacy proceeding serves to end the time within which it is possible to probate after-discovered wills, or to give effect to late-discovered facts concerning heirship. Determination of heirs is not barred by the three-year limitation but a judicial determination of heirs is conclusive unless the order may be vacated.

This section authorizes a court to engage in some construction of wills incident to determining whether a will is entitled to probate. It seems desirable to leave the extent of this power to the sound discretion of the court. If wills are not construed in connection with a judicial probate, they may be subject to construction at any time. See section [91A-3-108].

91A-3-411. Formal testacy proceedings — partial intestacy. If it becomes evident in the course of a formal testacy proceeding that, though one (1) or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

History: En. 91A-3-411 by Sec. 1, Ch. 365, L. 1974.

91A-3-412. Formal testacy proceedings—effect of order—vacation. Subject to appeal and subject to vacation as provided herein and in section 91A-3-413, a formal testacy order under sections 91A-3-409 through 91A-3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

(1) the court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication.

(2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one (1) or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death or were given no notice of any proceeding concerning his estate, except by publication.

(3) A petition for vacation under either (1) or (2) above must be filed prior to the earlier of the following time limits:

(a) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six (6) months after the filing of the closing statement.

(b) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by section 91A-3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent.

(c) Twelve (12) months after the entry of the order sought to be vacated.

(4) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs.

(5) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under section 91A-3-403(2) was made.

If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

History: En. 91A-3-412 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The provisions barring proof of late-discovered wills is derived in part from section 81 of Model Probate Code. The same section is the source of the provisions of (5) above. The provisions permitting vacation of an order determining heirs on certain conditions reflect the effort to offer parallel possibilities for adjudications in testate and intestate estates. See section [91A-3-401]. An objective is to make it possible to handle an intestate estate exactly as a testate estate may be handled. If this is achieved, some of the pressure on persons to make wills may be relieved.

If an alleged decedent turns out to have been alive, heirs and distributees are liable to restore the "estate or its proceeds." If neither can be identified through the normal process of tracing assets, their liability depends upon the circumstances. The liability of distributees to claimants whose claims have not been barred, or to persons shown to be entitled to distribution when a formal proceeding changes a previous assumption informally established which guided an earlier distribution, is different. See sections [91A-3-909 and [91A-3-1005].

91A-3-413. Formal testacy proceedings—vacation of order for other cause. For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

History: En. 91A-3-413 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

See sections [91A-1-304 and 91A-1-308].

91A-3-414. Formal proceedings regarding appointment of personal representative. (1) A formal proceeding for adjudication regarding the

priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by section 91A-3-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by section 91A-3-301(1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(2) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under section 91A-3-203, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under section 91A-3-611.

History: En. 91A-3-414 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

A petition raising a controversy concerning the priority or qualifications of a personal representative may be combined with a petition in a formal testacy proceeding. However, it is not necessary to petition formally for the appointment of a personal representative as a part of a formal testacy proceeding. A personal representative may be appointed on informal application either before or after formal proceedings which establish whether the decedent died testate or intestate or no appointment may be desired. See sections [91A-3-107, 91A-3-301(3), (4) and 91A-3-307]. Furthermore, procedures for securing the appointment of a new personal representative after a previous assumption as to testacy has been changed are provided by section [91A-3-612]. These may be informal, or related to pending formal proceedings concerning testacy. A formal order relating to appointment may be desired when there is a dispute concerning priority or qualification to serve but no dispute concerning testacy. It is important to distinguish formal proceedings concerning appointment from "supervised administration." The former includes any proceeding after notice involving a request for an appointment. The latter originates in a "formal proceeding" and may be requested in addition to a ruling concerning testacy or priority or qualifications of a personal representative, but is descriptive of a special proceeding with a different scope and purpose than those concerned merely with establishing the bases for an administration. In other words, a personal representative appointed in a "formal" proceeding may or may not be "supervised."

Another point should be noted. The court may not immediately issue letters even though a formal proceeding seeking appointment is involved and results in an order authorizing appointment. Rather, sections [91A-3-601] et seq. control the subject of qualification. Section [91A-1-305] deals with letters.

Part 5—Supervised Administration

Section

91A-3-501. Supervised administration—nature of proceeding.
91A-3-502. Supervised administration—petition—order.
91A-3-503. Supervised administration—effect on other proceedings.
91A-3-504. Supervised administration—powers of personal administration.
91A-3-505. Supervised administration—interim orders—distribution and closing orders.

91A-3-501. Supervised administration—nature of proceeding. Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in sections 91A-3-501 through 91A-3-505, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

History: En. 91A-3-501 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This and the following sections of this part describe an optional procedure for settling an estate in one continuous proceeding in the court. The proceeding is characterized as "in rem" to align it with the concepts described by the Model Probate Code. See Section 62, M.P.C. In cases where supervised administration is not requested or ordered, no compulsion other than self-interest exists to compel use of a formal testacy proceeding to secure an adjudication of a will or no will, because informal probate or appointment of an administrator in intestacy may be used. Similarly, unless administration is supervised, there is no compulsion other than self-interest to use a formal closing proceeding. Thus, even though an estate administration may be begun by use of a formal testacy proceeding which may involve an order concerning who is to be appointed personal representative, the proceeding is over when the order concerning testacy and appointment is entered. See section [91A-3-107]. Supervised administration, therefore, is appropriate when an interested person desires assurance that the essential steps regarding opening and closing of an estate will be adjudicated. See the Comment following the next section.

91A-3-502. Supervised administration—petition—order. A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied. After notice to interested persons, the court shall order supervised administration of a decedent's estate:

(1) if the decedent's will directs supervised administration, it shall be ordered unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;

(2) if the decedent's will directs unsupervised administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or

(3) in other cases if the court finds that supervised administration is necessary under the circumstances.

History: En. 91A-3-502 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The expressed wishes of a testator regarding supervised administration should bear upon, but not control, the question of whether supervised administration will be ordered. This section is designed to achieve a fair balance between the wishes of the decedent, and the interests of successors in regard to supervised administration.

Since supervised administration normally will result in an adjudicated distribution of the estate, the issue of will or no will must be adjudicated. This section achieves this by forcing a petition for supervised administration to include matters necessary to put the issue of testacy before the court. It is possible, however, that supervised administration will be requested because administrative complexities warranting it develop after the issue of will or no will has been resolved in a previously concluded formal testacy proceeding.

It should be noted that supervised administration, though it compels a judicial settlement of an estate, is not the only route to obtaining judicial review and settlement at the close of an administration. The procedures described in sections [91A-3-1101 and 91A-3-1102] are available for use by or against personal representatives who are not supervised. Also efficient remedies for breach of duty by a personal representative who is not supervised are available under Part 6 of this [chapter]. Finally, each personal representative consents to jurisdiction of the court as invoked by mailed notice of any proceeding relating to the estate which may be initiated by an interested person. Also, persons interested in the estate may be subjected to orders of the court following mailed notices made in proceedings initiated by the personal representative. In combination, these possibilities mean that supervised administration will be valuable principally to persons who see some advantage in a single judicial proceeding which will produce adjudications on all major points involved in an estate settlement.

91A-3-503. Supervised administration—effect on other proceedings. (1) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

(2) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 91A-3-401.

(3) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

History: En. 91A-3-503 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The duties and powers of a personal representative are described in Part 7 of this [chapter]. The ability of a personal representative to create a good title in a purchaser of estate assets is not hampered by the fact that the personal representative may breach a duty created by statute, court order or other circumstances in making the sale. See section [91A-3-713]. However, formal proceedings against a personal representative may involve requests for qualification of the power normally possessed by personal representatives which, if granted, would subject the personal representative to the penalties for contempt of court if he disregarded the restriction. See section [91A-3-607]. If a proceeding also involved a demand that particular real estate be kept in the estate pending determination of a petitioner's claim thereto, notice of the pendency of the proceeding could be recorded as is usual under the jurisdiction's system for the lis pendens concept.

The word "restricts" in the last sentence is intended to negate the idea that a judicial order specially qualifying the powers and duties of a personal repre-

sentative is a restraining order in the usual sense. The section means simply that some supervised personal representative may receive the same powers and duties as ordinary personal representatives, except that they must obtain a court order before paying claimants or distributing, while others may receive a more restricted set of powers. Section [91A-3-607] governs petitions which seek to limit the power of a personal representative.

91A-3-504. Supervised administration—powers of personal administration. Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

History: En. 91A-3-504 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section provides authority to issue letters showing restrictions of power of supervised administrators. In general, persons dealing with personal representatives are not bound to inquire concerning the authority of a personal representative, and are not affected by provisions in a will or judicial order unless they know of it. But, it is expected that persons dealing with personal representatives will want to see the personal representative's letters, and this section has the practical effect of requiring them to do so. No provision is made for noting restrictions in letters except in the case of supervised representatives. See section [91A-3-713].

91A-3-505. Supervised administration—interim orders—distribution and closing orders. Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under section 91A-3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

History: En. 91A-3-505 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Since supervised administration is a single proceeding, the notice requirement contained in [section 91A-3-106] relates to the notice of institution of the proceedings which is described with particularity by section [91A-3-502]. The above section makes it clear that an additional notice is required for a closing order. It was discussed whether provision for notice of interim orders should be included. It was decided to leave the point to be covered by court order or rule. There was a suggestion for a rule as follows: "Unless otherwise required by order, notice of interim orders in supervised administration need be given only to interested persons who request notice of all orders entered in the proceeding." [Section 91A-1-402] permits any person to waive notice by a writing filed in the proceeding.

A demand for notice under section [91A-3-204] would entitle any interested person to notice of any interim order which might be made in the course of supervised administration.

Part 6—Personal Representative—Appointment, Control and Termination of Authority

Section

91A-3-601. Qualification of personal representative.
91A-3-602. Acceptance of appointment—consent to jurisdiction.
91A-3-603. Bond not required without court order—exceptions.
91A-3-604. Bond amount—security—procedure—reduction.
91A-3-605. Demand for bond by interested person.

91A-3-606. Terms and conditions of bond.
91A-3-607. Order restraining personal representative.
91A-3-608. Termination of appointment—general.
91A-3-609. Termination of appointment—death or disability.
91A-3-610. Termination of appointment—voluntary.
91A-3-611. Termination of appointment by removal—cause—procedure.
91A-3-612. Termination of appointment—change of testacy status.
91A-3-613. Successor personal representative.
91A-3-614. Special administrator—appointment.
91A-3-615. Special administrator—who may be appointed.
91A-3-616. Special administrator—appointed informally—powers and duties.
91A-3-617. Special administrator—formal proceedings—power and duties.
91A-3-618. Termination of appointment—special administrator.

91A-3-601. Qualification of personal representative. Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

History: En. 91A-3-601 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This and related sections of this part describe details and conditions of appointment which apply to all personal representatives without regard to whether the appointment proceeding involved is formal or informal, or whether the personal representative is supervised. Section [91A-1-305] authorizes issuance of copies of letters and prescribes their content. The section should be read with section [91A-3-504] which directs endorsement on letters of any restrictions of power of a supervised administrator.

91A-3-602. Acceptance of appointment—consent to jurisdiction. By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

History: En. 91A-3-602 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Except for personal representatives appointed pursuant to section [91A-3-502], appointees are not deemed to be "officers" of the appointing court or to be parties in one continuous judicial proceeding that extends until final settlement. See section [91A-3-107]. Yet, it is desirable to continue present patterns which prevent a personal representative who might make himself unavailable to service within the state from affecting the power of the appointing court to enter valid orders affecting him. See Michigan Trust Co. v. Ferry (1912) 228 U.S. 346, 57 L.Ed. 867, 33 S.Ct. 550. The concept employed to accomplish this is that of requiring each appointee to consent in advance to the personal jurisdiction of the court in any proceeding relating to the estate that may be instituted against him. The section requires that he be given notice of any such proceeding, which, when considered in the light of the responsibility he has undertaken, should make the procedure sufficient to meet the requirements of due process.

91A-3-603. Bond not required without court order—exceptions. No bond is required of a personal representative appointed in informal proceedings, except (1) upon the appointment of a special administrator;

(2) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond or

(3) when bond is required under section 91A-3-605.

Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties.

History: En. 91A-3-603 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section must be read with the next three sections. The purpose of these provisions is to move away from the idea that bond always should be required of a probate fiduciary, or required unless a will excuses it. Also, it is designed to keep the registrar acting pursuant to applications in informal proceedings, from passing judgment in each case on the need for bond. The point is that the court and registrar are not responsible for seeing that personal representatives perform as they are supposed to perform. Rather, performance is coerced by the remedies available to interested persons. Interested persons are protected by their ability to demand prior notice of informal proceedings (section [91A-3-204]), to contest a requested appointment by use of a formal testacy proceeding or by use of a formal proceeding seeking the appointment of another person. Section [91A-3-105] gives general authority to the court in a formal proceeding to make appropriate orders as desirable incident to estate administration. This should be sufficient to make it clear that an informal application may be blocked by a formal petition which disputes the matters stated in the petition. Furthermore, an interested person has the remedies provided in sections [91A-3-605 and 91A-3-607]. Finally, interested persons have assurance under this code that their rights in respect to the values of a decedent's estate cannot be terminated without a judicial order after notice or before the passage of three years from the decedent's death.

It is believed that the total package of protection thus afforded may represent more real protection than a blanket requirement of bond. Surely, it permits a reduction in the procedures which must occur in uncomplicated estates where interested persons are perfectly willing to trust each other and the fiduciary.

91A-3-604. Bond amount—security—procedure—reduction. If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the clerk indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the clerk, or give other suitable security, in an amount not less than the estimate. The clerk shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The clerk may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in section 91A-6-101) in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

History: En. 91A-3-604 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section permits estimates of value

needed to fix the amount of required bond to be filed when it becomes necessary. A consequence of this procedure is that estimates of value of estates no longer need appear in the petitions and applications which will attend every administered estate. Hence, a measure of privacy that is not possible under most existing procedures may be achieved. A co-signature arrangement might constitute adequate security within the meaning of this section.

91A-3-605. Demand for bond by interested person. Any person apparently having an interest in the estate worth in excess of one thousand dollars ($1,000), or any creditor having a claim in excess of one thousand dollars ($1,000), may make a written demand that a personal representative give bond. The demand must be filed with the clerk and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in section 91A-3-603 or 91A-3-604. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty (30) days after receipt of notice is cause for his removal and appointment of a successor personal representative.

History: En. 91A-3-605 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The demand for bond described in this section may be made in a petition or application for appointment of a personal representative, or may be made after a personal representative has been appointed. The mechanism for compelling bond is designed to function without unnecessary judicial involvement. If demand for bond is made in a formal proceeding, the judge can determine the amount of bond to be required with due consideration for all circumstances. If demand is not made in formal proceedings, methods for computing the amount of bond are provided by statute so that the demand can be complied with without resort to judicial proceedings. The information which a personal representative is required by section [91A-3-705] to give each beneficiary includes a statement concerning whether bond has been required.

91A-3-606. Terms and conditions of bond. (1) The following requirements and provisions apply to any bond required by this part:

(a) Bonds shall name the state as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

(b) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.

(c) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.

(d) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

(e) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

History: En. 91A-3-606 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

[Subdivision (1)(a)] is based, in part, on Section 109 of the Model Probate Code. [Subdivision (1)(c)] is derived from Section 118 of the Model Probate Code.

91A-3-607. Order restraining personal representative. (1) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(2) The matter shall be set for hearing within ten (10) days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.

History: En. 91A-3-607 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Cf. section [91A-3-401] which provides for a restraining order against a previously appointed personal representative incident to a formal testacy proceeding. The above section describes a remedy which is available for any cause against a previously appointed personal representative, whether appointed formally or informally.

This remedy, in combination with the safeguards relating to the process for appointment of a personal representative, permit "control" of a personal representative that is believed to be equal, if not superior to that presently available with respect to "supervised" personal representatives appointed by inferior courts. The request for a restraining order may mark the beginning of a new proceeding but the personal representative, by the consent provided in section [91A-3-602], is practically in the position of one who, on motion, may be cited to appear before a judge.

91A-3-608. Termination of appointment—general. Termination of appointment of a personal representative occurs as indicated in sections 91A-3-609 to 91A-3-612, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

History: En. 91A-3-608 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

"Termination," as defined by this and succeeding provisions, provides definiteness respecting when the powers of a personal representative (who may or may not be discharged by court order) terminate.

It is to be noted that this section does not relate to jurisdiction over the estate in proceedings which may have been commenced against the personal representative prior to termination. In such cases, a substitution of successor or special representative should occur if the plaintiff desires to maintain his action against the estate.

It is important to note that "termination" is not "discharge." However, an order of the court entered under [section 91A-3-1001 or 91A-3-1002] both terminates the appointment of, and discharges, a personal representative.

91A-3-609. Termination of appointment—death or disability. The death of a personal representative or the appointment of a conservator for the estate of a personal representative, terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

History: En. 91A-3-609 by Sec. 1, Ch. 365, L. 1974.

91A-3-610. Termination of appointment—voluntary. (1) An appointment of a personal representative terminates as provided in section 91A-3-1003, one (1) year after the filing of a closing statement.

(2) An order closing an estate as provided in section 91A-3-1001 or 91A-3-1002 terminates an appointment of a personal representative.

(3) A personal representative may resign his position by filing a written statement of resignation with the clerk after he has given at least fifteen (15) days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

History: En. 91A-3-610 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

[Subsection (3)] above provides a procedure for resignation by a personal representative which may occur without judicial assistance.

91A-3-611. Termination of appointment by removal—cause—procedure. (1) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in section 91A-3-607, after receipt of notice of removal proceedings, the personal representative

shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

(2) Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

History: En. 91A-3-611 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Thought was given to qualifying [(1)] above so that no formal removal proceedings could be commenced until after a set period from entry of any previous order reflecting judicial consideration of the qualifications of the personal representative. It was decided, however, that the matter should be left to the judgment of interested persons and the court.

DECISIONS UNDER FORMER LAW

Examination of Administrator

In proceeding for removal of administrator for misappropriation of funds of estate, administrator could be examined as adverse witness as provided in Rule 43, M. R. Civ. P.; Rule 81, excluding statutory proceedings from Rules of Civil Procedure to extent that statutory proceedings are contrary to rules, did not bar examination of administrator as adverse witness. In re Estate and Guardianship of Wyman, 149 M 525, 429 P 2d 629.

Inventory of Assets

Administratrix who failed to file inventory and appraisement within three months after appointment, failed to file first accounting within six months after appointment, failed to make money from sale of property available to heirs, failed to provide estate with interest on money from sale of property, lost inheritance tax credit and allowed tax penalties to be assessed against estate was properly removed. In re Estate of Smith, 149 M 326, 426 P 2d 575.

91A-3-612. Termination of appointment—change of testacy status. Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in section 91A-3-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within thirty (30) days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

History: En. 91A-3-612 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section and section [91A-3-401] describe the relationship between formal or informal proceedings which change a previous assumption concerning the testacy of the decedent, and a previously appointed personal representative. The basic assumption of both sections is that an appointment, with attendant powers of management, is separable from the basis of appointment; i. e., intestate or testate?; what will is the last will? Hence, a previously appointed personal representative continues to serve in spite of formal or informal proceedings that may give another a prior right to serve as personal representative. But, if the testacy status is changed in formal proceedings, the petitioner also may request appointment of the person who would be entitled to serve if his assumption concerning the decedent's will prevails. Provision is made for a situation where all interested persons are content to allow a previously appointed personal representative to continue to serve even though another has a prior right because of a change relating to the decedent's will. It is not necessary for the continuing representative to seek reappointment under the new assumption for section [91A-3-703] is broad enough to require him to administer the estate as intestate, or under a later probated will, if either status is established after he was appointed. Under section [91A-3-403], notice of a formal testacy proceeding is required to be given to any previously appointed personal representative. Hence, the testacy status cannot be changed without notice to a previously appointed personal representative.

91A-3-613. Successor personal representative. Sections 91A-3-301 through 91A-3-414 govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

History: En. 91A-3-613 by Sec. 1, Ch. 365, L. 1974.

91A-3-614. Special administrator — appointment. A special administrator may be appointed:

(1) informally by the clerk on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in section 91A-3-609;

(2) in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

History: En. 91A-3-614 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The appointment of a special administrator other than one appointed pending original appointment of a general personal representative must be handled by the court. Appointment of a special administrator would enable the estate to

participate in a transaction which the general personal representative could not, or should not, handle because of conflict of interest. If a need arises because of temporary absence or anticipated incapacity for delegation of the authority of a personal representative, the problem may be handled without judicial intervention by use of the delegation powers granted to personal representatives by section [91A-3-716].

91A-3-615. Special administrator—who may be appointed. (1) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available, and qualified.

(2) In other cases, any proper person may be appointed special administrator.

History: En. 91A-3-615 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

In some areas of the country, particularly where wills cannot be probated without full notice and hearing, appointment of special administrators pending probate is sought almost routinely. The provisions of this code concerning informal probate should reduce the number of cases in which a fiduciary will need to be appointed pending probate of a will. Nonetheless, there will be instances where contests begin before probate and where it may be necessary to appoint a special administrator. The objective of this section is to reduce the likelihood that contestants will be encouraged to file contests as early as possible simply to gain some advantage via having a person who is sympathetic to their cause appointed special administrator. Most will contests are not successful. Hence, it seems reasonable to prefer the named executor as special administrator where he is otherwise qualified.

91A-3-616. Special administrator—appointed informally—powers and duties. A special administrator appointed by the clerk in informal proceedings pursuant to section 91A-3-614(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under the code necessary to perform his duties.

History: En. 91A-3-616 by Sec. 1, Ch. 365, L. 1974.

91A-3-617. Special administrator—formal proceedings—power and duties. A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the court may direct.

History: En. 91A-3-617 by Sec. 1, Ch. 365, L. 1974.

91A-3-618. Termination of appointment—special administrator. The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in sections 91A-3-608 through 91A-3-611.

History: En. 91A-3-618 by Sec. 1, Ch. 365, L. 1974.

Part 7—Duties and Powers of Personal Representatives

Section
91A-3-701. Time of accrual of duties and powers.
91A-3-702. Priority among different letters.
91A-3-703. General duties—relation and liability to persons interested in estate—standing to sue.
91A-3-704. Personal representative to proceed without court order—exception.
91A-3-705. Duty of personal representative—information to heirs and devisees.
91A-3-706. Duty of personal representative; supplementary inventory and appraisement; employment of appraiser; copy to department of revenue.
91A-3-707. Duty of personal representative—supplementary inventory—copy to department of revenue.
91A-3-708. Duty of personal representative—possession of estate.
91A-3-709. Power to avoid transfers.
91A-3-710. Improper exercise of power—breach of fiduciary duty.
91A-3-711. Sale, encumbrance or transaction involving conflict of interest—voidable—exceptions.
91A-3-712. Persons dealing with personal representatives—protection.
91A-3-713. Transactions authorized for personal representatives—exceptions.
91A-3-715.1. Estate sales—inventory required—exception.
91A-3-716. Powers and duties of successor personal representative.
91A-3-717. Corepresentatives—when joint action required.
91A-3-718. Powers of surviving personal representative.
91A-3-719. Compensation of personal representative.
91A-3-720. Compensation of attorney.
91A-3-721. Expenses in estate litigation.
91A-3-722. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate—court to set disputed fee.

91A-3-701. Time of accrual of duties and powers. The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

History: En. 91A-3-701 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section codifies the doctrine that the authority of a personal representative relates back to death from the moment it arises. It also makes it clear that authority of a personal representative stems from his appointment. The sentence concerning ratification is designed to eliminate technical questions that might arise concerning the validity of acts done by others prior to appointment. Section [91A-3-713(21)] relates to delegation of authority after appointment. The third sentence accepts an idea found in the Illinois Probate Act, § 79.

91A-3-702. Priority among different letters. A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

History: En. 91A-3-702 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The qualification relating to "modifica-

tion" of an appointment is intended to refer to the change that may occur in respect to the exclusive authority of one with letters upon later appointment of a corepresentative or of a special administrator. The sentence concerning erroneous dual appointment is derived from recent New York legislation. See Section 704, Surrogate's Court Procedure Act.

Erroneous appointment of a second personal representative is possible if formal proceedings after notice are employed. It might be desirable for a state to promulgate a system whereby a notation of letters issued by each county probate office would be relayed to a central record keeping office which, in turn could indicate to any other office whether letters for a particular decedent, perhaps identified by social security number, had been issued previously. The problem can arise even though notice to known interested persons and by publication is involved.

91A-3-703. General duties—relation and liability to persons interested in estate—standing to sue. (1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees under the laws of the state of Montana. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

(2) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration and of this code, an informally probated will is authority to administer and distribute the estate according to its terms. Subject to the provisions of this code, an order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this code.

(3) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to death.

History: En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This and the next section are especially important sections for they state the basic theory underlying the duties and powers of personal representatives. Whether or not a personal representative is supervised, this section applies to describe the relationship he bears to interested parties. If a supervised representative is appointed, or if supervision of a previously appointed personal representative is ordered, an additional obligation to the court is created. See section [91A-3-501].

The fundamental responsibility is that of a trustee. Unlike many trustees, a personal representative's authority is derived from appointment by the public agency known as the court. But, the code also makes it clear that the personal representative, in spite of the source of his authority, is to proceed with the admin-

istration, settlement and distribution of the estate by use of statutory powers and in accordance with statutory directions. See sections [91A-3-107 and 91A-3-704]. Subsection [(2)] is particularly important, for it ties the question of personal liability for administrative or distributive acts to the question of whether the act was "authorized at the time." Thus, a personal representative may rely upon and be protected by a will which has been probated without adjudication or an order appointing him to administer which is issued in no-notice proceedings even though proceedings occurring later may change the assumption as to whether the decedent died testate or intestate. See section [91A-3-302] concerning the status of a will probated without notice and section [91A-3-102] concerning the ineffectiveness of an unprobated will. However, it does not follow from the fact that the personal representative distributed under authority that the distributees may not be liable to restore the property or values received if the assumption concerning testacy is later changed. See sections [91A-3-909 and 91A-3-1004]. Thus, a distribution may be "authorized at the time" within the meaning of this section, but be "improper" under the latter section.

[Subsection (3)] is designed to reduce or eliminate differences in the amenability to suit of personal representatives appointed under this code and under traditional assumptions. Also, the subsection states that so far as the law of the appointing forum is concerned, personal representatives are subject to suit in other jurisdictions. It, together with various provisions of [chapter 4] are designed to eliminate many of the present reasons for ancillary administrations.

DECISIONS UNDER FORMER LAW

Collection of Assets

Executor was not liable for loss occasioned to estate by virtue of decedent's stockbroker's theft of decedent's securities, which theft occurred prior to the death of decedent but was not discovered until one year after decedent's death; the executor was responsible for the "assets" existing in the estate of the decedent at the time of death, and the only "asset" of the estate existing at that time was a claim for the value of the securities stolen from decedent during his lifetime, which the executor attempted diligently to collect through instigation of receivership proceedings against brokerage firm owned by decedent's stockbroker. In re Estate of Schueren, — M —, 512 P 2d 1283.

Failure to Join Beneficiary

Although proper procedure was followed in bringing suit against administrator of estate without joining all beneficiaries, conduct of parties in perpetrating fraud on court required that judgment be vacated on motion of aggrieved beneficiary who was not party to suit. Selway v. Burns, 150 M 1, 429 P 2d 640.

Performance of Requests Not Required

Administratrix who signed petition promising final distribution of estate according to terms and provisions of will had no obligation to carry out precatory language of will suggesting the subsequent disposition of devise by devisee. Stapleton v. DeVries, — M —, 535 P 2d 1267.

91A-3-704. Personal representative to proceed without court order—exception. A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified under this code or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration.

History: En. 91A-3-704 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section is intended to confer authority on the personal representative to initiate a proceeding at any time when it is necessary to resolve a question relating to administration. Section [91A-3-105] grants broad subject matter jurisdiction to the probate court which covers a proceeding initiated for any purpose other than those covered by more explicit provisions dealing with testacy proceedings, proceedings for supervised administration, proceedings concerning disputed claims and proceedings to close estates.

91A-3-705. Duty of personal representative—information to heirs and devisees. Not later than thirty (30) days after his appointment every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information shall include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers or other duties. A personal representative may inform other persons of his appointment by delivery or ordinary first class mail.

History: En. 91A-3-705 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section requires the personal representative to inform persons who appear to have an interest in the estate as it is being administered, of his appointment. Also, it requires the personal representative to give notice to persons who appear to be disinherited by the assumption concerning testacy under which the personal representative was appointed. The communication involved is not to be confused with the notice requirements relating to litigation. The duty applies even though there may have been a prior testacy proceeding after notice, except that persons who have been adjudicated to be without interest in the estate are excluded. The rights, if any, of persons in regard to estates cannot be cut off completely except by the running of the three-year statute of limitations provided in section [91A-3-108], or by a formal judicial proceeding which will include full notice to all interested persons. The interests of some persons may be shifted from rights to specific property of the decedent to the proceeds from sale thereof, or to rights to values received by distributees. However, such a shift of protected interest from one thing to another, or to funds or obligations, is not new in relation to trust beneficiaries. A personal representative may initiate formal proceedings to determine whether persons, other than those appearing to have interests, may be interested in the estate, under section [91A-3-401] or, in connection with a formal closing, as provided by section [91A-3-1001].

No information or notice is required by this section if no personal representative is appointed.

91A-3-706. Duty of personal representative; supplementary inventory and appraisement; employment of appraiser; copy to department of revenue. Within three (3) months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory, which inventory shall include listing of all property which the decedent owned, had an interest in or control over, individually, in common, or jointly, or otherwise had at the time of his death; or had possessory or dispository rights over at the time of his death or had disposed of for less than its fair market value within three (3) years of his death; or which was affected by his death for the purpose

of inheritance or estate taxes. The inventory shall include a statement of the full and true value of the decedent's interest in every item listed in such inventory. In this connection the personal representative shall appoint one (1) or more qualified and disinterested persons to assist him in ascertaining the fair market value as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

The personal representative shall send a copy of the inventory to interested persons who request it, or he may file the original of the inventory with the court. In any event, a copy of the inventory and statement of value shall be mailed to the department of revenue.

History: En. 91A-3-706 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 4, Ch. 516, L. 1975.

Compiler's Notes

The first paragraph of the corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners reads as follows: "Within three months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item." The second sentence in the second paragraph is omitted in the official text. Section 3-707 of the Uniform Probate Code, relating to employment to appraisers, is omitted from the Montana enactment.

Editorial Board Comment

This and the following sections eliminate the practice now required by many probate statutes under which the judge is involved in the selection of appraisers. If the personal representative breaches his duty concerning the inventory, he may be removed. Section [91A-3-611]. Or, an interested person seeking to surcharge a personal representative for losses incurred as a result of his administration might be able to take advantage of any breach of duty concerning inventory. The section provides two ways in which a personal representative may handle an inventory. If the personal representative elects to send copies to all interested persons who request it, information concerning the assets of the estate need not become a part of the records of the probate court. The alternative procedure is to file the inventory with the court. This procedure would be indicated in estates with large numbers of interested persons, where the burden of sending copies to all would be substantial. The court's role in respect to the second alternative is simply to receive and file the inventory with the file relating to the estate. See [91A-3-204], which permits any interested person to demand notice of any document relating to an estate which may be filed with the court.

Amendments

The 1975 amendment substituted "appoint one (1) or more qualified and disinterested persons to assist" for "appoint at least three (3) qualified and disinterested persons, any two (2) of whom may act to assist" toward the end of the first paragraph; and substituted "or he may file" in the second paragraph for "and he shall file" before "the original of the inventory."

91A-3-707. Duty of personal representative—supplementary inventory—copy to department of revenue. If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed,

or furnish copies thereof or information thereof to persons interested in the new information; and in any case shall mail a copy of it to the department of revenue.

History: En. 91A-3-707 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 3-708; the requirement for mailing a copy of the supplementary inventory to the department of revenue was added in the Montana enactment.

91A-3-708. Duty of personal representative—possession of estate. Except as otherwise provided by a decedent's will and subject to the provisions of section 91-3205, R. C. M. 1947, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

History: En. 91A-3-708 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 3-709; the Montana enactment inserted "and subject to the provisions of section 91-3205, R. C. M. 1947" in the first sentence of the section.

Editorial Board Comment

Section [91A-3-101] provides for the devolution of title on death. Section [91A-3-710] defines the status of the personal representative with reference to "title" and "power" in a way that should make it unnecessary to discuss the "title" to decedent's assets which his personal representative acquires. This section deals with the personal representative's duty and right to possess assets. It proceeds from the assumption that it is desirable whenever possible to avoid disruption of possession of the decedent's assets by his devisees or heirs. But, if the personal representative decides that possession of an asset is necessary or desirable for purposes of administration, his judgment is made conclusive in any action for possession that he may need to institute against an heir or devisee. It may be possible for an heir or devisee to question the judgment of the personal representative in later action for surcharge for breach of fiduciary duty, but this possibility should not interfere with the personal representative's administrative authority as it relates to possession of the estate.

This code follows the Model Probate Code in regard to partnership interests. In the introduction to the Model Probate Code, the following appears at p. 22:

"No provisions for the administration of partnership estates when a partner dies have been included. Several states have statutes providing that unless the surviving partner files a bond with the probate court, the personal representative of the deceased partner may administer the partnership estate upon giving an additional bond. Kan. Gen. Stat. (Supp. 1943) §§ 59-1001 to 59-1005; Mo. Rev. Stat. Ann. (1942) §§ 81 to 93. In these states the administration of partnership estates upon the death of a partner is brought more or less completely under the jurisdiction of the probate court. While the provisions afford security to parties in interest, they have caused complications in the settlement of partnership estates and have produced much litigation. Woener, Administration (3rd ed., 1923) §§ 128 to 130; annotation, 121 A.L.R. 860. These statutes have been held to be inconsistent with

section 37 of the Uniform Partnership Act [secs. 63-101 et seq.] providing for winding up by the surviving partner. Davis v. Hutchinson (C.C.A. 9th, 1929) 36 F.(2d) 309. Hence the Model Probate Code contains no provision regarding partnership property except for inclusion in the inventory of the decedent's proportionate share of any partnership. See § 120. However, it is suggested that the Uniform Partnership Act should be included in the statutes of the states which have not already enacted it."

91A-3-709. Power to avoid transfers. The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

History: En. 91A-3-709 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 3-710. Section 3-711 of the Uniform Probate Code, relating to powers of personal representatives in general, is omitted from the Montana enactment.

Editorial Board Comment

Model Probate Code section 125, with additions. See, also, section [91A-6-101] which saves creditors' rights in regard to nontestamentary transfers effective at death.

91A-3-710. Improper exercise of power—breach of fiduciary duty. If any exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in sections 91A-3-711 and 91A-3-712.

History: En. 91A-3-710 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 3-712.

Editorial Board Comment

An interested person has two principal remedies to forestall a personal representative from committing a breach of fiduciary duty. (1) Under section [91A-3-607] he may apply to the court for an order restraining the personal representative from performing any specified act or from exercising any power in the course of administration. (2) Under section [91A-3-611] he may petition the court for an order removing the personal representative.

Evidence of a proceeding, or order, restraining a personal representative from selling, leasing, encumbering or otherwise affecting title to real property subject to administration, if properly recorded under the laws of this state, would be effective to prevent a purchaser from acquiring a marketable title under the usual rules relating to recordation of real property titles.

In addition, sections [91A-1-302 and 91A-3-105] authorize joinder of third persons who may be involved in contemplated transactions with a personal representative in proceedings to restrain a personal representative under section [91A-3-607].

91A-3-711. Sale, encumbrance or transaction involving conflict of interest—voidable—exceptions. Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure, unless

(1) the will or a contract entered into by the decedent expressly authorized the transaction; or

(2) the transaction is approved by the court after notice to interested persons.

History: En. 91A-3-711 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 3-713.

Editorial Board Comment

If a personal representative violates the duty against self-dealing described by this section, a voidable title to assets sold results. Other breaches of duty relating to sales of assets will not cloud titles except as to purchasers with actual knowledge of the breach. See section [91A-3-712]. The principles of bona fide purchase would protect a purchaser for value without notice of defect in the seller's title arising from conflict of interest.

91A-3-712. Persons dealing with personal representatives—protection. A person who in good faith and without notice either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 91A-3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries nor does it in any way limit the provisions of section 91A-3-1010.

History: En. 91A-3-712 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 3-714; the Montana enactment added the phrase "nor does it in any way limit the provisions of section 91A-3-1010" at the end of the section.

Editorial Board Comment

This section qualifies the effect of a provision in a will which purports to prohibit sale of property by a personal representative. The provisions of a will may prescribe the duties of a personal representative and subject him to surcharge or other remedies of interested persons if he disregards them. See section [91A-3-703]. But, the will's prohibition is not relevant to the rights of a purchaser unless he had actual knowledge of its terms. Interested persons who want to prevent a personal representative from having the power described here must use the procedures described in sections [91A-3-501 to 91A-3-505]. Each state will need to identify the relation between this section and other statutory provisions creating liens on estate assets for inheritance and other taxes. The section cannot control whether a purchaser takes free of the lien of unpaid federal estate taxes. Hence, purchasers from personal representatives appointed pursuant to this code will have to satisfy themselves concerning whether estate taxes are paid, and if not paid, whether the tax lien follows the property they are acquiring. See section 6234, Internal Revenue Code.

The impact of formal recording systems beyond the usual probate procedure depends upon the particular statute. In states in which the recording system pro-

vides for recording wills as muniments of title, statutory adaptation should be made to provide that recording of wills should be postponed until the validity has been established by probate or limitation. Statutory limitation to this effect should be added to statutes which do not so provide to avoid conflict with power of the personal representative during administration. The purpose of the code is to make the deed or instrument of distribution the usual muniment of title. See sections [91A-3-907, 91A-3-908, 91A-3-910]. However, this is not available when no administration has occurred and in that event reliance upon general recording statutes must be had.

If a state continues to permit wills to be recorded as muniments of title, the above section would need to be qualified to give effect to the notice from recording.

91A-3-713. Transactions authorized for personal representatives—exceptions. Except as restricted by this code or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 91A-3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries, or other sources;

(3) perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop or dedicate land to public use; make or obtain

the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) with the consent of the heirs or devisees or the court, abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

(17) with the consent of the heirs or devisees or the court effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisers, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one (1) or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances provided, however, no personal representative shall without prior court approval in a supervised proceeding, either directly or indirectly purchase any property of the estate he represents, nor shall he be interested in any such sale. All sales shall be fairly conducted and made for the best price obtainable.

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(a) in the same business form for a period of not more than four (4) months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;

(b) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or

(c) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) satisfy and settle claims and distribute the estate as provided in this code.

History: En. 91A-3-713 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 3-715. The Montana enactment inserted the phrase "with the consent of the heirs or devisees or the court" at the beginning of subdivisions (11) and (17) and a subdivision in the Uniform Probate Code section authorizing provision "for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate" was omitted.

Editorial Board Comment

This section accepts the assumption of the Uniform Trustee's Powers Act that it is desirable to equip fiduciaries with the authority required for the prudent handling of assets and extends it to personal representatives. The section requires that a personal representative act reasonably and for the benefit of the interested person. Subject to this and to the other qualifications described by the preliminary statement, the enumerated transactions are made authorized transactions for personal representatives. Subparagraphs [(26)] and (18) support the other provisions of the code, particularly section [91A-3-704], which contemplates that personal representatives will proceed with all of the business of administration without court orders.

In part, subparagraph (4) involves a substantive question of whether noncontractual charitable pledges of a decedent can be honored by his personal representative. It is believed, however, that it is not desirable from a practical standpoint to make much turn on whether a charitable pledge is, or is not, contractual. Pledges are rarely made the subject of claims. The effect of subparagraph (4) is to permit the personal representative to discharge pledges where he believes the decedent would have wanted him to do so without exposing himself to a surcharge. The holder of a contractual pledge may, of course, pursue the remedies of a creditor. If a pledge provides that the obligation ceases on the death of the pledgor, no personal representative would be safe in assuming that the decedent would want

the pledge completed under the circumstances.

Subsection (3) is not intended to affect the right to performance or to damages of any person who contracted with the decedent. To do so would constitute an unreasonable interference with private rights. The intention of the subsection is simply to give a personal representative who is obligated to carry out a decedent's contracts the same alternatives in regard to the contractual duties which the decedent had prior to his death.

91A-3-714, 91A-3-715. Repealed.

Repeal

Sections 91A-3-714 and 91A-3-715 (Sec. 1, Ch. 365, L. 1974), relating to duty of personal representative to file final accounting and to prerequisite for sale of estate property, were repealed by Sec. 10, Ch. 516, Laws 1975. For present provisions on estate sales, see 91A-3-715.1.

91A-3-715.1. Estate sales—inventory required—exception. Save upon an order of court obtained after notice and hearing in a supervised proceeding or formal probate, no property of the estate may be sold unless an inventory and statement of value has been delivered to the state department of revenue.

History: En. 91A-3-715.1 by Sec. 6, Ch. 516, L. 1975.

Title of Act

An act amending sections 91A-1-401, 91A-3-303, 91A-3-403, 91A-3-706, 91A-3-806, 91A-3-1010, and 91-4468, R. C. M. 1947, relating to the Montana Uniform Probate Code and repealing sections 91A-6-103, 91A-3-714, 91A-3-715, and 91-218, R. C. M. 1947.

91A-3-716. Powers and duties of successor personal representative. A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

History: En. 91A-3-716 by Sec. 1, Ch. 365, L. 1974.

91A-3-717. Corepresentatives—when joint action required. If two (2) or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a corepresentative has been delegated to act for the others. Persons dealing with a corepresentative if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

History: En. 91A-3-717 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

With certain qualifications, this section is designed to compel corepresentatives to agree on all matters relating to administration when circumstances permit. Delegation by one to another representative is a form of concurrence in acts that may result from the delegation. A corepresentative who abdicates his responsibility to co-administer the estate by a blanket delegation breaches his duty to interested persons as described by section [91A-3-703]. Section [91A-3-713(21)] authorizes some limited delegations, which are reasonable and for the benefit of interested persons.

91A-3-718. Powers of surviving personal representative. Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one (1) or more remaining after the appointment of one (1) or more is terminated, and if one (1) of two (2) or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

History: En. 91A-3-718 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Source, Model Probate Code section 102. This section applies where one of two or more corepresentatives dies, becomes disabled or is removed. In regard to coexecutors, it is based on the assumption that the decedent would not consider the powers of his fiduciaries to be personal, or to be suspended if one or more could not function. In regard to coadministrators in intestacy, it is based on the idea that the reason for appointing more than one ceases on the death or disability of either of them.

91A-3-719. Compensation of personal representative. (1) A personal representative is entitled to reasonable compensation for his services. Such compensation shall not exceed three per cent (3%) of the first forty thousand dollars ($40,000) of the value of the estate as reported for federal estate tax or state inheritance tax purposes, whichever is larger and two per cent (2%) of the value of the estate in excess of forty thousand dollars ($40,000) as reported for federal estate tax or state inheritance tax purposes, whichever is larger.

(2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal representative shall not exceed two per cent (2%) of the interest passing.

(3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal representative shall not exceed two per cent (2%) of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation shall not exceed two per cent (2%) of the value of the estate, except that it shall not be less than one hundred dollars ($100).

(4) If there is more than one personal representative, only one compensation is allowed.

(5) The court may allow additional compensation for extraordinary services. Such additional compensation shall not be greater than the amount which is allowed for the original compensation.

(6) If the will provides for the compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to compensation under the terms of this section. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

History: En. 91A-3-719 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners reads as follows: "A personal representative is entitled to reasonable compensation for his services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may

renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court."

Editorial Board Comment

This section has no bearing on the question of whether a personal representative who also serves as attorney for the estate may receive compensation in both capacities. If a will provision concerning a fee is framed as a condition on the nomination as personal representative, it could not be renounced.

DECISIONS UNDER FORMER LAW

Neglect and Mismanagement of Estate

Removed administratrix and her attorneys who failed to make money from sale of property available to heirs, failed to provide for interest on money from sale of property for benefit of estate, lost inheritance tax credit and allowed tax penalties to be assessed against the estate were properly allowed fees less than those provided for by statute since statute applied only to fees for successful completion of estate. In re Estate of Smith, 149 M 326, 426 P 2d 575.

91A-3-720. Compensation of attorney. (1) If the services of an attorney are engaged by the personal representative, the compensation of such attorney shall not exceed one and one half (1½) times the compensation allowable to the personal representative.

(2) If the services of an attorney are engaged by the personal representative to assist in the termination of joint tenancies, the compensation allowed the attorney shall not exceed three per cent (3%) of the interest passing.

(3) If the services of an attorney are engaged in connection with the termination of a life estate, the compensation allowed the attorney shall not exceed three per cent (3%) of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the attorney's compensation shall not exceed three per cent (3%) except that it shall not be less than one hundred dollars ($100).

(4) If the services of more than one attorney are engaged, only one compensation shall be allowed.

(5) In cases where further compensation may be allowed to an attorney, the same must be fixed and determined by the court upon good cause shown after notice and hearing of an application therefor.

History: En. 91A-3-720 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

This section is not part of the Uniform Probate Code as promulgated by the National Conference of Commissioners.

91A-3-721. Expenses in estate litigation. If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.

History: En. 91A-3-721 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 3-720.

Editorial Board Comment

Litigation prosecuted by a personal representative for the primary purpose of enhancing his prospects for compensation would not be in good faith.

A personal representative is a fiduciary for successors of the estate (section [91A-3-703]). Though the will naming him may not yet be probated, the priority for appointment conferred by section [91A-3-203] on one named executor in a probated will means that the person named has an interest, as a fiduciary, in seeking the pro-

bate of the will. Hence, he is an interested person within the meaning of sections [91A-3-301 and 91A-3-401]. Section [91A-3-912] gives the successors of an estate control over the executor, provided all are competent adults. So, if all persons possibly interested in the probate of a will, including trustees of any trusts created thereby, concur in directing the named executor to refrain from efforts to probate the instrument, he would lose standing to proceed. All of these observations apply with equal force to the case where the named executor of one instrument seeks to contest the probate of another instrument. Thus, the code changes the idea followed in some jurisdictions that an executor lacks standing to contest other wills which, if valid, would supersede the will naming him, and standing to oppose other contests that may be mounted against the instrument nominating him.

Unsuccessful Applicants for Letters of Administration

An unsuccessful applicant for letters of administration was not entitled to be paid attorneys' fees and costs out of the estate of decedent, either under former sections 93-8601 and 91-3405, or under this section. Matter of Estate of Dygert, — M —, 550 P 2d 393.

91A-3-722. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate—court to set disputed fee. Upon the filing of a motion for settlement of fees by the court filed by an interested person, the personal representative or the person employed by the personal representative and after notice to all interested persons, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, shall be reviewed and determined by the court. In any dispute concerning fees, the court shall set the fee. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

History: En. 91A-3-722 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 3-721 and reads as follows: "After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment adviser or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds."

Editorial Board Comment

In view of the broad jurisdiction conferred on the probate court by section [91A-3-105], description of the special proceeding authorized by this section might be unnecessary. But, the code's theory that personal representatives may fix their own fees and those of estate attorneys marks an important departure from much existing practice under which fees are determined by the court in the first instance. Hence, it seemed wise to emphasize that any interested person can get judicial review of fees if he desires it. Also, if excessive fees have been paid, this section provides a quick and efficient remedy.

Part 8—Creditors' Claims

Section
91A-3-801. Notice to creditors.
91A-3-802. Statutes of limitations.
91A-3-803. Limitations of presentation of claims—exception.
91A-3-804. Manner of presentation of claims.
91A-3-805. Classification of claims.
91A-3-806. Allowance of claims.
91A-3-807. Payment of claims.

91A-3-808. Individual liability of personal representative.
91A-3-809. Secured claims.
91A-3-810. Claims not due and contingent or unliquidated claims.
91A-3-811. Counterclaims.
91A-3-812. Execution and levies prohibited.
91A-3-813. Compromise of claims.
91A-3-814. Encumbered assets.
91A-3-815. Administration in more than one state—duty of personal representative.
91A-3-816. Final distribution to domiciliary personal representative.

EDITORIAL BOARD COMMENT

The need for uniformity of law regarding creditors' claims against estates is especially strong. Commercial and consumer credit depends upon efficient collection procedures. The cost of credit is pushed up by the cost of credit life insurance which becomes a practical necessity for lenders unwilling to bear the expense of understanding or using the cumbersome and provincial collection procedures found in fifty codes of probate.

The sections which follow facilitate collection of claims against decedents in several ways. First, a simple written statement mailed to the personal representative is a sufficient "claim." Allowance of claims is handled by the personal representative and is assumed if a claimant is not advised of disallowance. Also, a personal representative may pay any just claims without presentation and at any time, if he is willing to assume risks which will be minimal in many cases. The period of uncertainty regarding possible claims is only four months from first publication. This should expedite settlement and distribution of estates.

91A-3-801. Notice to creditors. Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for three (3) successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within four (4) months after the date of the first publication of the notice or be forever barred, and proof of publication shall be filed with the clerk.

History: En. 91A-3-801 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The Montana enactment added the phrase "and proof of publication shall be filed with the clerk" at the end of this section.

Editorial Board Comment

Section [91A-3-1203], relating to small estates, contains an important qualification on the duty created by this section.

Failure to advertise for claims would involve a breach of duty on the part of the personal representative. If, as a result of such breach, a claim is later asserted against a distributee under section [91A-3-1005], the personal representative may be liable to the distributee for costs related to discharge of the claim and the recovery of contribution from other distributees. The protection afforded personal representatives under section [91A-3-1003] would not be available, for that section applies only if the personal representative truthfully recites that he has advertised for claims as required by this section.

It would be appropriate, by court rule, to channel publications through the personnel of the probate court. See section [91A-1-401]. If notices are controlled by a centralized authority, some assurance could be gained against publication in newspapers of small circulation. Also, the form of notices could be made uniform and certain efficiencies could be achieved. For example, it would be compatible with this section for the court to publish a single notice each day or each week listing the names of personal representatives appointed since the last publication, with addresses and dates of nonclaim.

91A-3-802. Statutes of limitations. Unless an estate is insolvent the personal representative, with the consent of all successors, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement

for claims against a decedent is suspended during the four (4) months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under section 91A-3-804 is equivalent to commencement of a proceeding on the claim.

History: En. 91A-3-802 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section means that four months is added to the normal period of limitations by reason of a debtor's death before a debt is barred. It implies also that after the expiration of four months from death, the normal statute of limitations may run and bar a claim even though the nonclaim provisions of section [91A-3-803] have not been triggered. Hence, the nonclaim and limitation provisions of section [91A-3-803] are not exclusive.

It should be noted that under sections [91A-3-803 and 91A-3-804] it is possible for a claim to be barred by the process of claim, disallowance and failure by the creditor to commence a proceeding to enforce his claim prior to the end of the four-month suspension period. Thus, the regular statute of limitations applicable during the debtor's lifetime, the nonclaim provisions of sections [91A-3-803, 91A-3-804], and the three-year limitation of section [91A-3-803] all have potential application to a claim. The first of the three to accomplish a bar controls.

91A-3-803. Limitations of presentation of claims—exception. (1) All claims against a decedent's estate with the exception of claims for taxes and claims founded on tort which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) within four (4) months after the date of the first publication of notice to creditors if notice is given in compliance with section 91A-3-801; provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state; or

(b) within three (3) years after the decedent's death, if notice to creditors has not been published.

(2) All claims against a decedent's estate with the exception of claims for taxes and claims founded on tort which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) a claim based on a contract with the personal representative, within four (4) months after performance by the personal representative is due;

(b) any other claim, within four (4) months after it arises.

(3) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance.

History: En. 91A-3-803 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 352, L. 1975.

Editorial Board Comment

There was some disagreement among the Reporters over whether a short period of limitations, or of nonclaim, should be provided for claims arising at or after death. [Subsection (2)] was finally inserted because most felt it was desirable to accelerate the time when unadjudicated distributions would be final. The time limits stated would not, of course, affect any personal liability in contract, tort, or by statute, of the personal representative. Under section [91A-3-808] a personal representative is not liable on transactions entered into on behalf of the estate unless he agrees to be personally liable or unless he breaches a duty by making the contract. Creditors of the estate and not of the personal representative thus face a special limitation that runs four months after performance is due from the personal representative. Tort claims normally will involve casualty insurance of the decedent or of the personal representative, and so will fall within the exception of [subsection (3)]. If a personal representative is personally at fault in respect to a tort claim arising after the decedent's death, his personal liability would not be affected by the running of the special short period provided here.

The limitation stated in [subdivision (1)(b)] dovetails with the three-year limitation provided in section [91A-3-108] to eliminate most questions of succession that are controlled by state law after three years from death have elapsed. Questions of interpretation of any will probated within such period, or of the identity of heirs in intestacy are not barred, however.

Amendments

The 1975 amendment inserted "for taxes and claims" in the first sentence of subsections (1) and (2).

DECISIONS UNDER FORMER LAW

Actual Notice Unnecessary

Bank which failed to present claim on note against decedent's estate within statutory time was barred where notice by publication appeared in only newspaper in community of 1,800 citizens of which both bank and decedent were residents; bank's contention that it received no actual notice which could have been accomplished with ease and that to bar claim under such circumstances was deprivation of property without due process of law was rejected. Baker Nat. Bank v. Henderson, 151 M 526, 445 P 2d 574.

Contract Claims

All claims against estate arising from contract were required to be presented to executor within four months of first publication of notice to creditors. Brown v. Midland Nat. Bank, 150 M 422, 435 P 2d 878.

Mechanic's Lien

A mechanic's lien was not a claim arising upon a contract within meaning of the statute and the lien was lost because creditor's claim was not filed. Hammer v. Chapin, 256 F Supp 819.

91A-3-804. Manner of presentation of claims. Claims against a decedent's estate may be presented as follows:

(1) The claimant shall mail to the personal representative return receipt requested a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited

for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

(3) If a claim is presented under subsection (1), no proceeding thereon may be commenced more than sixty (60) days after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the sixty (60) day period, or to avoid injustice the court, on petition, may order an extension of the sixty (60) day period, but in no event shall the extension run beyond the applicable statute of limitations.

History: En. 91A-3-804 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The filing of a claim with the probate court under (2) of this section does not serve to initiate a proceeding concerning the claim. Rather, it serves merely to protect the claimant who may anticipate some need for evidence to show that his claim is not barred. The probate court acts simply as a depository of the statement of claim, as is true of its responsibility for an inventory filed with it under section [91A-3-706].

In reading this section it is important to remember that a regular statute of limitation may run to bar a claim before the nonclaim provisions run. See section [91A-3-802].

91A-3-805. Classification of claims. (1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(a) costs and expenses of administration;

(b) reasonable funeral expenses and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;

(c) federal estate and Montana state estate and inheritance taxes;

(d) debts with preference under federal and Montana law;

(e) other federal and Montana state taxes;

(f) all other claims.

(2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

History: En. 91A-3-805 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 352, L. 1975.

Amendments

The 1975 amendment added "and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending to him" to subdivision (1)(b); inserted present subdivision (1)(c); rewrote and designated as subdivision (1)(d) former subdivision (1)(c) which read: "debts and taxes with preference under federal law"; deleted former subdivision (1)(d) which read substantially the same as the matter added to subdivision (1)(b); deleted former subdivision (1)(e) which read: "debts and taxes with preference under the laws of this state"; and inserted present subdivision (1)(e).

DECISIONS UNDER FORMER LAW

Circumvention of Payment Priorities

In action to recover unpaid hospital expenses from decedent's heirs at law who had distributed assets of decedent's estate without having administrator appointed, trial court improperly granted relief to plaintiff hospital since it could not sue upon its claim until it first presented such claim to administrator; thus, proper remedy would have been for hospital to apply for letters of administration as creditor, and hospital's attempted remedy circumvented statutory priorities for payment of debts. Daughters of Jesus v. Gee, 153 M 342, 457 P 2d 471.

91A-3-806. Allowance of claims. (1) As to claims presented in the manner described in section 91A-3-804 within the time limit prescribed in 91A-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty (60) days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for sixty (60) days after the time for original presentation of the claim has expired has the effect of a notice of disallowance.

(2) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1) of this section. Notice in this proceeding shall be given to the claimant, the personal representative and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(3) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(4) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty (60) days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

History: En. 91A-3-806 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 7, Ch. 516, L. 1975.

Amendments

The 1975 amendment substituted "disallowance" for "allowance" at the end of subsection (1).

DECISIONS UNDER FORMER LAW

Claim for Hospital Expenses

In action to recover unpaid hospital expenses from decedent's heirs at law, who had distributed assets without having administrator appointed, trial court improperly granted relief to plaintiff hospital since it could not sue upon its claim until it first presented such claim to administrator; thus, proper remedy would have been for hospital to apply for letters of administration as creditor, and hospital's attempted remedy circumvented statutory priorities for payment of debts. Daughters of Jesus v. Gee, 153 M 343, 457 P 2d 471.

Effect of Fraud

Final decree of distribution and discharge in probate would not be set aside on ground of inadvertence or fraud under statute or M. R. Civ. P., Rule 60(b), in absence of manifest abuse of court's discretion to grant relief thereunder, in case where moving party had every opportunity to protect his claim in probate and failed to do so. Werning v. McFarland, 149 M 137, 423 P 2d 851.

Exclusive Nature of Procedure

Rule 41(e), M. R. Civ. P., providing for dismissal of action for failure to serve summons as provided therein, did not apply to service of summons in suit on rejected claim in probate which was governed exclusively by statute providing for contesting rejected claims in probate. Werning v. McFarland, 149 M 137, 423 P 2d 851.

Summons After Discharge

Summons, in suit on rejected claim filed within three-month statutory limit, served after discharge in probate was not substantial compliance with statutory requirement to "bring suit" within three months of rejection of claim and relieved executrix of statutory duty to pay amount of disputed claim into court. Werning v. McFarland, 149 M 137, 423 P 2d 851.

Variance Between Claim and Suit

Claim sued upon was required to be within scope of claim presented to executor, so that action for breach of contract to bequeath could not be predicated upon creditor's claim to recover debt. Brown v. Midland Nat. Bank, 150 M 422, 435 P 2d 878.

91A-3-807. Payment of claims. (1) Upon the expiration of four (4) months from the date of the first publication of the notice to creditors, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(2) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if

(a) the payment was made before the expiration of the time limit stated in subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

History: En. 91A-3-807 by Sec. 1, Ch. 365, L. 1974.

91A-3-808. Individual liability of personal representative. (1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate adminis-

tration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

History: En. 91A-3-808 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

In the absence of statute an executor, administrator or a trustee is personally liable on contracts entered into in his fiduciary capacity unless he expressly excludes personal liability in the contract. He is commonly personally liable for obligations stemming from ownership or possession of the property (e.g., taxes) and for torts committed by servants employed in the management of the property. The claimant ordinarily can reach the estate only after exhausting his remedies against the fiduciary as an individual and then only to the extent that the fiduciary is entitled to indemnity from the property. This and the following sections are designed to make the estate a quasi-corporation for purposes of such liabilities. The personal representative would be personally liable only if an agent for a corporation would be under the same circumstances, and the claimant has a direct remedy against the quasi-corporate property.

91A-3-809. Secured claims. Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following:

(1) if the creditor exhausts his security before receiving payment, unless precluded by other law upon the amount of the claim allowed less the fair value of the security; or

(2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise or litigation.

History: En. 91A-3-809 by Sec. 1, Ch. 365, L. 1974.

91A-3-810. Claims not due and contingent on unliquidated claims. (1) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(2) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

(a) if the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;

(b) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

History: En. 91A-3-810 by Sec. 1, Ch. 365, L. 1974.

91A-3-811. Counterclaims. In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

History: En. 91A-3-811 by Sec. 1, Ch. 365, L. 1974.

91A-3-812. Execution and levies prohibited. No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges or liens upon real or personal property in an appropriate proceeding.

History: En. 91A-3-812 by Sec. 1, Ch. 365, L. 1974.

91A-3-813. Compromise of claims. When a claim against the estate has been presented in any manner, the personal representative, with the consent of the heirs or devisees or the court may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

History: En. 91A-3-813 by Sec. 1, Ch. 365, L. 1974.

91A-3-814. Encumbered assets. If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

History: En. 91A-3-814 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Section [91A-2-609] establishes a rule of construction against exoneration. Thus, unless the will indicates to the contrary, a specific devisee of mortgaged property takes subject to the lien without right to have other assets applied to discharge the secured obligation.

91A-3-815. Administration in more than one state—duty of personal representative. (1) All assets of estates being administered in this state are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed.

(2) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the

exemptions, allowances and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(3) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshaled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

History: En. 91A-3-815 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Under section [91A-3-803(1)(a)], if a local (property only) administration is commenced and proceeds to advertisement for claims before nonclaim statutes have run at domicile, claimants may prove claims in the local administration at any time before the local nonclaim period expires. [This section] has the effect of subjecting all assets of the decedent, wherever they may be located and administered, to claims properly presented in any local administration. It is necessary, however, that the personal representative of any portion of the estate be aware of other administrations in order for him to become responsible for claims and charges established against other administrations.

91A-3-816. Final distribution to domiciliary personal representative. The estate of a nonresident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless (1) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile;

(2) the personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or

(3) the court orders otherwise in a proceeding for a closing order under section 91A-3-1001 or incident to the closing of a supervised administration. In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this article.

History: En. 91A-3-816 by Sec. 1, Ch. 365, L. 1974.

Part 9—Special Provisions Relating to Distribution

Section
91A-3-901. Successors' rights if no administration.
91A-3-902. Distribution—order in which assets appropriated—abatement.
91A-3-903. Successor's indebtedness offset against interest—defenses available.

91A-3-904. Interest on general pecuniary devise.
91A-3-905. Penalty clause for contest.
91A-3-906. Distribution in kind—valuation—method.
91A-3-907. Distribution in kind—evidence.
91A-3-908. Distribution—right or title of distributee.
91A-3-909. Improper distribution—liability of distributee.
91A-3-910. Purchasers from distributees protected.
91A-3-911. Partition for purpose of distribution.
91A-3-912. Private agreements among successors to decedent binding on personal representative.
91A-3-913. Distribution to trustee.
91A-3-914. Disposition of unclaimed assets.
91A-3-915. Distribution to person under disability.
91A-3-916. Apportionment of estate taxes.

91A-3-901. Successors' rights if no administration. In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

History: En. 91A-3-901 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Title to a decedent's property passes to his heirs and devisees at the time of his death. See section [91A-3-101]. This section adds little to section [91A-3-101] except to indicate how successors may establish record title in the absence of administration.

91A-3-902. Distribution—order in which assets appropriated—abatement. (1) Except as provided in subsection (2) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

(a) property not disposed of by the will;
(b) residuary devises;
(c) general devises;
(d) specific devises.

For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(2) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(3) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

History: En. 91A-3-902 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

A testator may determine the order in which the assets of his estate are applied to the payment of his debts. If he does not, then the provisions of this section express rules wich may be regarded as approximating what testators generally want. The statutory order of abatement is designed to aid in resolving doubts concerning the intention of a particular testator, rather than to defeat his purpose. Hence, subsection [(2)] directs that consideration be given to the purpose of a testator. This may be revealed in many ways. Thus, it is commonly held that, even in the absence of statute, general legacies to a wife, or to persons with respect to which the testator is in loco parentis, are to be preferred to other legacies in the same class because this accords with the probable purpose of the legacies.

DECISIONS UNDER FORMER LAW

Federal Estate Taxes

Where a widow renounced the will and elected to take her dower and intestate share pursuant to former section 22-107 and her intestate share was one-third of the decedent's net estate in accordance with former section 91-403(1), such elected statutory share, which qualified for the marital deduction and generated no federal estate tax liability, was nonetheless chargeable with a proportionate share of the estate's total estate tax liability. Estate of Mosby, — M —, 554 P 2d 1341.

Where a will does not otherwise provide for the payment of federal estate taxes, the payment must be equitably apportioned among residuary interests so that a residuary interest not generating any estate taxes does not bear any burden for their payment. Robinson v. United States, 518 F 2d 1105, reversing 369 F Supp 925.

91A-3-903. Successor's indebtedness offset against interest—defenses available. The amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

History: En. 91A-3-903 by Sec. 1, Ch. 365, L. 1974.

91A-3-904. Interest on general pecuniary devise. General pecuniary devises bear interest at the legal rate beginning one (1) year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

History: En. 91A-3-904 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Unlike the common law, this section provides that a general pecuniary devisee's right to interest begins one year from the time when administration was commenced, rather than one year from death. The rule provided here is similar to the common-law rule in that the right to interest for delayed payment does not depend on whether the estate in fact realized income during the period of delay. The section is consistent with section 5(b) of the Revised Uniform Principal and Income Act which allocates realized net income of an estate between various categories of successors.

91A-3-905. Penalty clause for contest. A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

History: En. 91A-3-905 by Sec. 1, Ch. 365, L. 1974.

91A-3-906. Distribution in kind—valuation—method. (1) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(a) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in section 91A-2-402 shall receive the items selected.

(b) Any homestead or family allowance or devise payable in money may be satisfied by value in kind provided

(i) the person entitled to the payment has not demanded payment in cash;

(ii) the property distributed in kind is valued at fair market value as of the date of its distribution, and

(iii) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(c) For the purpose of valuation under paragraph (b) securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than thirty (30) days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(d) The residuary estate shall be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution.

(2) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty (30) days after mailing or delivery of the proposal.

History: En. 91A-3-906 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section establishes a preference for distribution in kind. It directs a personal representative to make distribution in kind whenever feasible and to convert assets to cash only where there is a special reason for doing so. It provides a reasonable means for determining value of assets distributed in kind. It is implicit in sections [91A-3-101, 91A-3-901] and this section that each residuary beneficiary's basic right is to his proportionate share of each asset constituting the residue.

91A-3-907. Distribution in kind—evidence. If distribution in kind is made, the personal representative shall execute an instrument or deed of

distribution assigning, transferring or releasing the assets to the distributee as evidence of the distributee's title to the property.

History: En. 91A-3-907 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This and sections following should be read with section [91A-3-708] which permits the personal representative to leave certain assets of a decedent's estate in the possession of the person presumptively entitled thereto. The "release" contemplated by this section would be used as evidence that the personal representative had determined that he would not need to disturb the possession of an heir or devisee for purposes of administration.

Under section 3-711 [omitted in Montana] a personal representative's relationship to assets of the estate is described as the "same power over the title to property of the estate as an absolute owner would have." A personal representative may, however, acquire a full title to estate assets, as in the case where particular items are conveyed to the personal representative by sellers, transfer agents or others. The language of [this section] is designed to cover instances where the instrument of distribution operates as a transfer, as well as those in which its operation is more like a release.

91A-3-908. Distribution—right or title of distributee. Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

History: En. 91A-3-908 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The purpose of this section is to channel controversies which may arise among successors of a decedent because of improper distributions through the personal representative who made the distribution, or a successor personal representative. Section [91A-3-108] does not bar appointment proceedings initiated to secure appointment of a personal representative to correct an erroneous distribution made by a prior representative. But see section [91A-3-1005].

91A-3-909. Improper distribution—liability of distributee. Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

History: En. 91A-3-909 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The term "improperly" as used in this section must be read in light of section [91A-3-703] and the manifest purpose of this and other sections of the code to shift questions concerning the propriety of various distributions from the fiduciary to the distributees in order to prevent every administration from becoming an adjudicated matter. Thus, a distribution may be "authorized at the time" as contemplated by section [91A-3-703] and still be "improper" under this section. Section [91A-3-703] is designed to permit a personal representative to distribute without risk in some cases, even though there has been no adjudication. When an unadjudicated distribution has occurred, the rights of persons to show that the basis for the distribution (e.g., an informally probated will, or informally issued letters of administration) is incorrect, or that the basis was improperly applied (erroneous interpretation, for example) is preserved against distributees by this section.

The definition of "distributee" to include the trustee and beneficiary of a testamentary trust in [91A-1-201(11)] is important in allocating liabilities that may arise under sections [91A-3-909 and

91A-3-910] on improper distribution by the personal representative under an informally probated will. The provisions of [91A-3-909 and 91A-3-910] are based on the theory that liability follows the property and the fiduciary is absolved from liability by reliance upon the informally probated will.

91A-3-910. Purchasers from distributees protected. If property distributed in kind or a security interest therein is acquired by a purchaser, or lender, for value from a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of any claims of the estate and incurs no personal liability to the estate, whether or not the distribution was proper. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind.

History: En. 91A-3-910 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The words "instrument or deed of distribution" are explained in section [91A-3-907]. The effect of this section may be to make an instrument or deed of distribution a very desirable link in a chain of title involving succession of land. Cf. section [91A-3-901].

91A-3-911. Partition for purpose of distribution. When two (2) or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one (1) or more of the heirs or devisees may petition the court prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

History: En. 91A-3-911 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Ordinarily heirs or devisees desiring partition of a decedent's property will resolve the issue by agreement without resort to the courts. (See section [91A-3-912].) If court determination is necessary, the court with jurisdiction to administer the estate has jurisdiction to partition the property.

91A-3-912. Private agreements among successors to decedent binding on personal representative. Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

History: En. 91A-3-912 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

It may be asserted that this section is only a restatement of the obvious and should be omitted. Its purpose, however, is to make it clear that the successors to an estate have residual control over the way it is to be distributed. Hence, they may compel a personal representative to administer and distribute as they may agree and direct. Successors should compare the consequences and possible advantages of careful use of the power to renounce as described by section [91A-2-801] with the effect of agreement under this section. The most obvious difference is that an agreement among successors under this section would involve transfers by some participants to the extent it changed the pattern of distribution from that otherwise applicable.

Differing from a pattern that is familiar in many states, this code does not subject testamentary trusts and trustees to special statutory provisions, or supervisory jurisdiction. A testamentary trustee is treated as a devisee with special duties which are of no particular concern to the personal representative. Article VII [omitted in Montana] contains optional procedures extending the safeguards available to personal representatives to trustees of both inter vivos and testamentary trusts.

91A-3-913. Distribution to trustee. (1) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in section 91A-7-303.

(2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(3) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (1) and (2).

History: En. 91A-3-913 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The reference in subsection (1) to "section 91A-7-303" is erroneous; the Montana enactment omitted section 7-303 of the Uniform Probate Code as promulgated by the National Conference of Commissioners.

Editorial Board Comment

This section is concerned with the fiduciary responsibility of the executor to beneficiaries of trusts to which he may deliver. Normally, the trustee represents beneficiaries in matters involving third persons, including prior fiduciaries. Yet, the executor may apprehend that delivery to the trustee may involve risks for the safety of the fund and for him. For example, he may be anxious to see that there is no equivocation about the devisee's willingness to accept the trust, and no problem of preserving evidence of the acceptance. He may have doubts about the integrity of the trustee, or about his ability to function satisfactorily. The testator's selection of the trustee may have been based on facts which are still current, or which are of doubtful relevance at the time of distribution. If the risks relate to the question of the trustee's intention to handle the fund without profit for himself, a conflict of interest problem is involved. If the risk relates to the ability of the trustee to manage prudently, a more troublesome question is posed for the executor. Is he, as executor, not bound to act in the best interests of the beneficiaries?

In many instances involving doubts of this sort, the executor probably will want the protection of a court order. Sections [91A-3-1001 and 91A-3-1002] provide ample authority for an appropriate proceeding in the court which issued the executor's letters.

In other cases, however, the executor may believe that he may be adequately protected if the acceptance of the trust by the devisee is unequivocal, or if the trustee is bonded. The purpose of this section is to make it clear that it is proper for the executor to require the trustee to register the trust and to notify beneficiaries before receiving distribution. Also, the section complements section 7-304 [omitted in Montana] by providing that the personal representative may petition an appropriate court to require that the trustee be bonded.

Status of testamentary trustees under the Uniform Probate Code. Under the Uniform Probate Code, the testamentary trustee by construction would be considered a devisee, distributee, and successor to whom title passes at time of the testator's death even though the will must be probated to prove the transfer. The informally probated will is conclusive until set aside and the personal representative may distribute to the trustee under the informally probated will or settlement agreement and the title of the trustee as distributee represented by the instrument or deed of distribution is conclusive until set aside on showing that it is improper. Should the informally probated will be set aside or the distribution to the trustee be shown to be improper, the trustee as distributee would be liable for value received but purchasers for value from the trustee as distributee under an instrument of distribution would be protected. [The] definition of "distributee" [in 91A-1-201(11)] limits the distributee liability of the trustee and substitutes that of the trust beneficiaries to the extent of distributions by the trustee.

As a distributee as defined by [91A-1-201(11)] the testamentary trustee or beneficiary of a testamentary trust is liable to claimants like other distributees, would have the right of contribution from other distributees of the decedent's estate and would be protected by the same time limitations as other distributees [91A-3-1007].

Incident to his standing as a distributee of the decedent's estate, the testamentary trustee would be an interested party who could petition for an order of complete settlement by the personal representative or for an order terminating testate administration. He also could appropriately receive the personal representative's account and distribution under a closing statement. As distributee he could represent his beneficiaries in compromise settlements in the decedent's estate which would be binding upon him and his beneficiaries. See section [91A-3-912].

The general fiduciary responsibilities of the testamentary trustee are not altered by the Uniform Probate Code and the trustee continues to have the duty to collect and reduce to possession within a reasonable time the assets of the trust estate including the enforcement of any claims on behalf of the trust against prior fiduciaries, including the personal representative, and third parties.

91A-3-914. Disposition of unclaimed assets. (1) If an heir, devisee or claimant cannot be found, the personal representative shall distribute the share of the missing person to his conservator, if any, otherwise to the department of revenue to be deposited in the state escheat fund as provided in chapter 5, Title 91, R. C. M. 1947, as amended.

(2) Any person having any claim to a share deposited in the state escheat fund under the provisions of this code shall follow the procedures set out in sections 91-501 through 91-526, concerning escheated estates to claim such share.

History: En. 91A-3-914 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

* * *

This section applies when it is believed that a claimant, heir or distributee exists but he cannot be located. See [91A-2-105].

91A-3-915. Distribution to person under disability. A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator, or any other person authorized by this code or otherwise to give a valid receipt and discharge for the distribution.

History: En. 91A-3-915 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Section [91A-5-103] is especially important as a possible source of authority for a valid discharge for payment or distribution made on behalf of a minor.

91A-3-916. Apportionment of estate taxes. (1) For purposes of this section:

(a) "estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;

(b) "person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

(c) "person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee;

(d) "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(e) "tax" means the federal estate tax and any additional inheritance, estate or death taxes imposed by the laws of any state and interest and penalties imposed in addition to the tax;

(f) "fiduciary" means personal representative or trustee.

(2) Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent's will directs a method of apportionment of tax different from the method described in this code, the method described in the will controls.

(3)(a) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the tax.

(b) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (2), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(c) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

(d) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this code the determination of the court in respect thereto shall be prima facie correct.

(4)(a) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover

from any person interested in the estate the amount of the tax apportioned to the person in accordance with this act.

(b) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

(5)(a) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax.

(b) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(c) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(d) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(e) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or devise is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (2) hereof, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(6) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

(7) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three (3) months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three (3) months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person inter-

ested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(8) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

[This section] copies the Uniform Estate Tax Apportionment Act.

DECISIONS UNDER FORMER LAW

Federal Estate Taxes

Where a widow renounced the will and elected to take her dower and intestate share pursuant to former section 22-107 and her intestate share was one-third of the decedent's net estate in accordance with former section 91-403(1), such elected statutory share, which qualified for the marital deduction and generated no federal estate tax liability, was nonetheless chargeable with a proportionate share of the estate's total estate tax liability. Estate of Mosby, — M —, 554 P 2d 1341.

Where a will does not otherwise provide for the payment of federal estate taxes, the payment must be equitably apportioned among residuary interests so that a residuary interest not generating any estate taxes does not bear any burden for their payment. Robinson v. United States, 518 F 2d 1105, reversing 369 F Supp 925.

Part 10—Closing Estates

Section

91A-3-1001. Formal proceedings terminating administration—testate or intestate—order of general protection.
91A-3-1002. Formal proceedings terminating testate administration—order construing will without adjudicating testacy.
91A-3-1003. Closing estates by sworn statement of personal representative.
91A-3-1004. Department of revenue certificate showing taxes paid or receipt of county treasurer—prerequisite of closing estate.
91A-3-1005. Liability of distributees to claimants.
91A-3-1006. Limitations on proceedings against personal representative.
91A-3-1007. Limitations on actions and proceedings against distributees.
91A-3-1008. Certificate discharging liens securing fiduciary performance.
91A-3-1009. Subsequent administration.
91A-3-1010. Lien of state on estate property for unpaid inheritance taxes.
91A-3-1011. Estate to be closed within two years.
91A-3-1012. Final accounting to close estate.

91A-3-1001. Formal proceedings terminating administration—testate or intestate—order of general protection. (1) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one (1) year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims which

arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

(2) If one (1) or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

History: En. 91A-3-1001 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Subsection [(2)] is derived from § 64 (b) of the Illinois Probate Act (1967). Section [91A-3-106] specifies that an order is binding as to all who are given notice even though less than all interested persons were notified. This section provides a method of curing an oversight in regard to notice which may come to light before the estate is finally settled. If the person who failed to receive notice of the earlier proceeding succeeds in obtaining entry of a different order from that previously made, others who received notice of the earlier proceeding may be benefitted. Still, they are not entitled to notice of the curative proceeding, nor should they be permitted to appear.

See also Comment following section [91A-3-1002].

91A-3-1002. Formal proceedings terminating testate administration—order construing will without adjudicating testacy. A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one (1) year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and

directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of section 91A-3-1001.

History: En. 91A-3-1002 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

[This section] permits a final determination of the rights between each other and against the personal representative of the devisees under a will when there has been no formal proceeding in regard to testacy. Hence, the heirs in intestacy need not be made parties. Section [91A-3-1001] permits a final determination of the rights between each other and against the personal representative of all persons interested in an estate. If supervised administration is used, section [91A-3-505] directs that the estate be closed by use of procedures like those described in [section 91A-3-1001]. Of course, testacy will have been adjudicated before time for the closing proceeding if supervised administration is used.

91A-3-1003. Closing estates by sworn statement of personal representative. (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than six (6) months after the date of original appointment of a general personal representative for the estate, a verified statement stating that he, or a prior personal representative whom he has succeeded, has or have:

(a) published notice to creditors as provided by section 91A-3-801 and that the first publication occurred more than six (6) months prior to the date of the statement;

(b) fully administered the estate of the decedent by making payment, settlement or other disposition of all claims which were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities;

(c) sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby; and

(d) complied with the provisions of section 91A-3-1004.

(2) If no proceedings involving the personal representative are pending in the court one (1) year after the closing statement is filed, the appointment of the personal representative terminates.

History: En. 91A-3-1003 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The Montana enactment added subdivision (1)(d).

Editorial Board Comment

The code uses "termination" to refer to events which end a personal representative's authority. See sections [91A-3-608], et seq. The word "closing" refers to circumstances which support the conclusions that the affairs of the estate either are, or have been alleged to have been, wound up. If the affairs of the personal representative are reviewed and adjudicated under either sections [91A-3-1001 or 91A-3-1002], the judicial conclusion that the estate is wound up serves also to terminate the personal representative's authority. See section [91A-3-610 (2)]. On the other hand, a "closing" statement under [this section] is only

an affirmation by the personal representative that he believes the affairs of the estate to be completed. The statement is significant because it reflects that assets have been distributed. Any creditor whose claim has not been barred and who has not been paid is permitted by section [91A-3-1005] to assert his claim against distributees. The personal representative is also still fully subject to suit under sections [91A-3-602 and 91A-3-603], for his authority is not "terminated" under section [91A-3-610(2)] until one year after a closing statement is filed. Even if his authority is "terminated," he remains liable to suit unless protected by limitation or unless an adjudication settling his accounts is the reason for "termination." See sections [91A-3-1006 and 91A-3-608].

From a slightly different viewpoint, a personal representative may obtain a complete discharge of his fiduciary obligations through a judicial proceeding after notice. Sections [91A-3-1001 and 91A-3-1002] describe two proceedings which enable a personal representative to gain protection from all persons or from devisees only. A personal representative who neither obtains a judicial order of protection nor files a closing statement, is protected by [section 91A-3-703] in regard to acts or distributions which were authorized when done but which become doubtful thereafter because of a change in testacy status. On the other questions, the personal representative who does not take any of the steps described by the code to gain more protection, has no protection against later claims of breach of his fiduciary obligation other than any arising from consent or waiver of individual distributees who may have bound themselves by receipts given to the personal representative.

This section increases the prospects of full discharge of a personal representative who uses the closing statement route over those of a personal representative who relies on receipts. Full protection follows from the running of the six months' limitations period described in [section 91A-3-1006]. But, [the latter section's] protection does not prevent distributees from claiming lack of full disclosure. Hence, it offers little more protection than a receipt. Still, it may be useful to decrease the likelihood of later claim of nondisclosure. Its more significant function, however, is to provide a means for terminating the office of personal representative in a way that will be obvious to third persons.

91A-3-1004. Department of revenue certificate showing taxes paid or receipt of county treasurer—prerequisite of closing estate. In all probate proceedings under this code before final distribution to successors is made and before any petition is granted under sections 91A-3-1001, 91A-3-1002, or 91A-3-1003, there shall have been filed with the clerk a certificate from the department of revenue or a receipt from the county treasurer stating that any inheritance tax due on the assets of the estate has been paid. This section shall not prohibit such partial distribution as may become necessary in the course of administration.

History: En. 91A-3-1004 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 99, L. 1975.

Compiler's Notes

This section is not part of the Uniform Probate Code as promulgated by the National Conference of Commissioners.

Amendments

The 1975 amendment inserted "or a receipt from the county treasurer" in the first sentence.

91A-3-1005. Liability of distributees to claimants. After assets of an estate have been distributed and subject to section 91A-3-1007, an undischarged claim not barred may be prosecuted in a proceeding against one (1) or more distributees. No distributee shall be liable to claimants for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

History: En. 91A-3-1005 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 3-1004.

Editorial Board Comment

This section creates a ceiling on the liability of a distributee of "the value of his distribution" as of the time of distribution. The section indicates that each distributee is liable for all that a claimant may prove to be due, provided the claim does not exceed the value of the defendant's distribution from the estate. But, each distributee may preserve a right of contribution against other distributees. The risk of insolvency of one or more, but less than all distributees is on the distributee rather than on the claimant.

91A-3-1006. Limitations on proceedings against personal representative. Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six (6) months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

History: En. 91A-3-1006 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 3-1005.

Editorial Board Comment

This and the preceding section make it clear that a claimant whose claim has not been barred may have alternative remedies when an estate has been distributed subject to his claim. Under this section, he has six months to prosecute an action against the personal representative if the latter breached any duty to the claimant. For example, the personal representative may be liable to a creditor if he violated the provisions of section [91A-3-807]. The preceding section describes the fundamental liability of the distributees to unbarred claimants to the extent of the value received. The last sentence emphasizes that a personal representative who fails to disclose matters relevant to his liability in his closing statement and in the account of administration he furnished to distributees, gains no protection from the period described here. A personal representative may, however, use section [91A-3-1001], or, where appropriate, [section 91A-3-1002] to secure greater protection.

91A-3-1007. Limitations on actions and proceedings against distributees. Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of three (3) years after the decedent's death; or one (1) year after the time of distribution therof. This section does not bar an action to recover property or value received as the result of fraud.

History: En. 91A-3-1007 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 3-1006.

Editorial Board Comment

This section describes an ultimate time limit for recovery by creditors, heirs and devisees of a decedent from distributees. It is to be noted: (1) Section [91A-3-108] imposes a general limit of three years from death on one who must set aside an informal probate in order to establish his rights, or who must secure

probate of a late-discovered will after an estate has been administered as intestate. Hence the time limit of [91A-3-108] may bar one who would claim as an heir or devisee sooner than this section, although it would never cause a bar prior to three years from the decedent's death. (2) This section would not bar recovery by a supposed decedent whose estate has been probated. See section [91A-3-412]. (3) The limitation of this section ends the possibility of appointment of a personal representative to correct an erroneous distribution as mentioned in sections [91A-3-1006 and 91A-3-1009]. If there have been no adjudications under section [91A-3-409], or possibly [91A-3-1001 or 91A-3-1002], estate of the decedent which is discovered after administration has been closed may be the subject of different distribution than that attending the estate originally administered.

The last sentence excepting actions or suits to recover property kept from one by the fraud of another may be unnecessary in view of the blanket provision concerning fraud in [Chapter 1]. See section [91A-1-106].

91A-3-1008. Certificate discharging liens securing fiduciary performance. After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the clerk that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

History: En. 91A-3-1008 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 3-1007.

Editorial Board Comment

This section does not affect the liability of the personal representative, or of any surety, but merely permits a release of security given by a personal representative, or his surety, when, from the passage of time and other conditions, it seems highly unlikely that there will be any liability remaining undischarged. See section [91A-3-607].

91A-3-1009. Subsequent administration. If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one (1) year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

History: En. 91A-3-1009 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 3-1008.

Editorial Board Comment

This section is consistent with section [91A-3-108] which provides a general period of limitations of three years from death for appointment proceedings, but makes appropriate exception for subsequent administrations.

91A-3-1010. Lien of state on estate property for unpaid inheritance taxes. All property which is affected by the death of the decedent and on which inheritance, estate or death taxes are due under the laws of this state is subject to the lien of the state of Montana until such taxes have

been paid. This lien follows all property sold in the course of administration or distributed under this code until such time as all inheritance taxes have been paid and a receipt showing payment thereof has been filed with the clerk of court, subject to applicable statutes of limitations on state inheritance tax liens. The department of revenue may issue a consent to transfer any real or personal property in the estate of a decedent free of the lien for unpaid inheritance taxes upon proper application and under such rules and regulations as the department shall prescribe.

History: En. 91A-3-1010 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 8, Ch. 516, L. 1975.

Compiler's Notes

This section is not part of the Uniform Probate Code as promulgated by the National Conference of Commissioners.

Amendments

The 1975 amendment deleted "provided that such transfer shall not jeopardize payment of the inheritance taxes due" at the end of the section.

91A-3-1011. Estate to be closed within two years. If an estate has not been closed within two (2) years from the date of appointment of the personal representative, the clerk of the district court shall notify the district judge thereof. The judge shall order the personal representative and his attorney to appear before the court and show cause why the estate has not been closed.

If, after the show cause hearing, the judge determines that good cause does not exist for failure to close the estate, the judge may make an order directing that the estate be closed within thirty (30) days and that the personal representative and his attorney receive no fee or other compensation from the estate.

History: En. 91A-3-1011 by Sec. 1, Ch. 191, L. 1975.

Title of Act

An act to amend the Uniform Probate Code to provide that a personal representative and his attorney may not receive a fee or other compensation for an estate not closed within two years unless good cause is shown to exist.

91A-3-1012. Final accounting to close estate. Before an estate may be finally closed and the personal representative relieved of his duties and obligations, he shall either file with the court or deliver to all interested persons an accounting under oath showing the amount of money received and expended by him, the amount of all claims presented against the estate and the names of the claimants and all other matters necessary to show the state of its affairs. Any interested person at any time during the course of the administration of an estate may for good cause shown require further accountings. If the personal representative is the sole beneficiary of the estate no accounting need be made.

History: En. 91A-3-1012 by Sec. 5, Ch. 516, L. 1975.

Part 11—Compromise of Controversies

Section
91A-3-1101. Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons.
91A-3-1102. Procedure for securing court approval of compromises.

91A-3-1101. Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons. A compromise of any controversy as to admission to probate of any instrument offered for formal

probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

History: En. 91A-3-1101 by Sec. 1, Ch. 365, L. 1974.

91A-3-1102. Procedure for securing court approval of compromises. The procedure for securing court approval of a compromise is as follows: (1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

(3) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

History: En. 91A-3-1102 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section and the one preceding it outline a procedure which may be initiated by competent parties having beneficial interests in a decedent's estate as a means of resolving controversy concerning the estate. If all competent persons with beneficial interests or claims which might be affected by the proposal and parents properly representing interests of their children concur, a settlement scheme differing from that otherwise governing the devolution may be substituted. The procedure for securing representation of minors and unknown or missing persons with interests must be followed. See section [91A-1-403]. The ultimate control of the question of whether the substitute proposal shall be accepted is with the court which must find: "that the contest or controversy is in good faith and that the effect of the agreement upon the interests of parties represented by fiduciaries is just and reasonable."

The thrust of the procedure is to put the authority for initiating settlement proposals with the persons who have beneficial interests in the estate, and to prevent executors and testamentary trustees from vetoing any such proposal. The only reason for approving a scheme of devolution which differs from that framed by the testator or the statutes governing intestacy is to prevent dissipation of the estate in wasteful litigation. Because executors and trustees may have an interest in fees and commissions which they might earn through efforts to carry out testator's intention, the judgment of

the court is substituted for that of such fiduciaries in appropriate cases. A controversy which the court may find to be in good faith, as well as concurrence of all beneficially interested and competent persons and parent-representatives provide prerequisites which should prevent the procedure from being abused. Thus, the procedure does not threaten the planning of a testator who plans and drafts with sufficient clarity and completeness to eliminate the possibility of good faith controversy concerning the meaning and legality of his plan.

See section [91A-1-403] for rules governing representatives and appointment of guardians ad litem.

These sections are modeled after section 93 of the Model Probate Code. Comparable legislative provisions have proved quite useful in Michigan. See M.C.L.A. §§ 702.45—702.49.

Part 12—Procedure for Collection of Personal Property by Affidavit, Termination of Joint Tenancies and Life Estates, and Summary Administration Procedure for Small Estates

Section
91A-3-1201. Collection of personal property by affidavit.
91A-3-1202. Effect of affidavit.
91A-3-1203. Small estates—summary administrative procedure.
91A-3-1204. Small estates—closing by sworn statement of personal representative.

EDITORIAL BOARD COMMENT

The four sections which follow include two designed to facilitate transfer of small estates without use of a personal representative, and two designed to simplify the duties of a personal representative, who is appointed to handle a small estate. [The fifth section in this part is not part of the Uniform Probate Code.]

The Flexible System of Administration described by earlier portions of [Chapter 3] lends itself well to situations involving small estates. Letters may be obtained quickly without notice or judicial involvement. Immediately, the personal representative is in a position to distribute to successors whose deeds or transfers will protect purchasers. This route accommodates the need for quick and inexpensive transfers of land of small value as well as other assets. Consequently, it was unnecessary to frame complex provisions extending the affidavit procedures to land.

Indeed, transfers via letters of administration may prove to be less troublesome than use of the affidavit procedure. Still, it seemed desirable to provide a quick collection mechanism which avoids all necessity to visit the probate court. For one thing, unpredictable local variations in probate practice may produce situations where the alternative procedure will be very useful. For another, the provision of alternatives is in line with the overall philosophy of [Chapter 3] to provide maximum flexibility.

Figures gleaned from a recent authoritative report of a major survey of probated estates in Cleveland, Ohio, demonstrate that more than one-half of all estates in probate had a gross value of less than $15,000. This means that the principal measure of the relevance of any legislation dealing with probate procedures is to be found in its impact on very small and moderate sized estates. Here is the area where probate affects most people.

91A-3-1201. Collection of personal property by affidavit. (1) Thirty (30) days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(a) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed fifteen hundred dollars ($1,500);

(b) thirty (30) days have elapsed since the death of the decedent;

(c) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

(2) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1).

History: En. 91A-3-1201 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section provides for an easy method for collecting the personal property of a decedent by affidavit prior to any formal disposition. Existing legislation generally permits the surviving widow or children to collect wages and other small amounts of liquid funds. [This section] goes further in that it allows the collection of personal property as well as money and permits any devisee or heir to make the collection. Since the appointment of a personal representative may be obtained easily under the code, it is unnecessary to make the provisions regarding small estates applicable to realty.

91A-3-1202. Effect of affidavit. The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any person representative of the estate or to any other person having a superior right.

History: En. 91A-3-1202 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Sections [91A-3-201 and 91A-3-1202] apply to any personal property located in this state whether or not the decedent died domiciled in this state, to any successor to personal property located in this state whether or not a resident of this state, and, to the extent that the laws of this state may control the succession to personal property, to personal property wherever located of a decedent who died domiciled in this state.

91A-3-1203. Small estates—summary administrative procedure. If it appears from the inventory and appraisal that the value of the net distributable estate does not exceed one thousand five hundred dollars ($1,500), or the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in section 91A-3-1204.

History: En. 91A-3-1203 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The Montana enactment inserted "the value of the net distributable estate does

not exceed one thousand five hundred dollars ($1,500), or the" near the beginning of the section. The compiler substituted the reference to "section 91A-3-1204" for an apparently erroneous reference to "section 91A-3-1202" at the end of the section.

Editorial Board Comment

This section makes it possible for the personal representative to make a summary distribution of a small estate without the necessity of giving notice to creditors. Since the probate estate of many decedents will not exceed the amount specified in the statute, this section will prove useful in many estates.

91A-3-1204. Small estates—closing by sworn statement of personal representative. (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of section 91A-3-1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, the value of the net distributable estate did not exceed one thousand five hundred dollars ($1,500), or the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of inheritance taxes and by disbursing and distributing it to the persons entitled thereto; and

(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(2) If no actions or proceedings involving the personal representative are pending in the court one (1) year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under section 91A-3-1003.

History: En. 91A-3-1204 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The Montana enactment inserted "value of the net distributable estate did not exceed one thousand five hundred dollars ($1,500) or the" in subdivision (1)(a). The compiler substituted the references to "section 91A-3-1203," in the first paragraph of subsection (1), and "section 91A-3-1003" at the end of subsection (3), for apparently erroneous references to "section 91A-3-1201" and "section 91A-3-1005," respectively.

Editorial Board Comment

The personal representative may elect to close the estate under section [91A-3-1002] in order to secure the greater protection offered by that procedure.

The remedies for fraudulent statement provided in section [91A-1-106] of course would apply to any intentional misstatements by a personal representative.

91A-3-1205. Repealed.

Repeal

Section 91A-3-1205 (Sec. 1, Ch. 365, L. 1974), relating to procedures for termination of joint tenancies and life estates, was repealed by Sec. 5, Ch. 409, Laws 1977.

Note

This section was repealed by Sec. 5, Ch. 424, Laws of 1975; section 4 of that act provided: "If Senate Bill No. 223 [Chapter 303, Laws of 1975] is enacted into law, nothing in this act may be construed to repeal or supersede the provisions of Senate Bill No. 223 as enacted."

Section 2, Ch. 303, Laws of 1975 provided: "Section 91A-3-1205, R. C. M. 1947, shall apply only to the termination of joint tenancies between unmarried persons."

See sections 91-4321.1, 91-4415, 91-4418, and 91-4469.

CHAPTER 4

FOREIGN PERSONAL REPRESENTATIVES—ANCILLARY ADMINISTRATION

Part
1. Definitions, 91A-4-101.
2. Powers of foreign personal representatives, 91A-4-201 to 91A-4-209.
3. Jurisdiction over foreign representatives, 91A-4-301 to 91A-4-303.
4. Judgments and personal representative, 91A-4-401.

EDITORIAL BOARD COMMENT

This [chapter] concerns the law applicable in estate problems which involve more than a single state. It covers the powers and responsibilities in the adopting state of personal representatives appointed in other states.

Some provisions of the code covering local appointment of personal representatives for nonresidents appear in [Chapter 3]. These include the following: [91A-3-201] (venue), [91A-3-202] (resolution of conflicting claims regarding domicile), [91A-3-203] (priority as personal representative of representative previously appointed at domicile), [91A-3-307(1)] (thirty days delay required before appointment of a local representative for a nonresident), [91A-3-803(1)] (claims barred by nonclaim at domicile before local administration commenced are barred locally) and [91A-3-815] (duty of personal representative in regard to claims where estate is being administered in more than one state). See also [91A-3-308, 91A-3-611(1) and 91A-3-816]. Also, see section [91A-4-209].

The recognition provisions contained in [Chapter 4] and the various provisions of [Chapter 3] which relate to administration of estates of nonresidents are designed to coerce respect for domiciliary procedures and administrative acts to the extent possible.

The first part of [Chapter 4] contains some definitions of particular relevance to estates located in two or more states.

The second part of [Chapter 4] deals with the powers of foreign personal representatives in a jurisdiction adopting the Uniform Probate Code. There are different types of power which may be exercised. * * * [The text of the Comment discussing the types of power of foreign personal representatives is omitted since the Montana enactment substantially revised the Uniform Probate Code provisions. Cf. sections 4-201 to 4-207 of the Uniform Probate Code as promulgated by the National Conference of Commissioners.]

Part 3 provides for power in the local court over foreign personal representatives who act locally. If a local or ancillary administration has been started, provisions in [Chapter 3] subject the appointee to the power of the court. See section [91A-3-602]. In Part 3 of this [chapter], it is provided that a foreign personal representative submits himself to the jurisdiction of the local court by filing a copy of his appointment to get the powers provided in section [91A-4-207] or by doing any act which would give the state jurisdiction over him as an individual. In addition, the collection of funds as provided in section [91A-4-204] gives the court quasi-in rem jurisdiction over the foreign personal representative to the extent of the funds collected.

Finally, section [91A-4-303] provides that the foreign personal representative is subject to the jurisdiction of the local court "to the same extent that his decedent was subject to jurisdiction immediately prior to death." This is similar to the typical nonresident motorist provision that provides for jurisdiction over the personal representative of a deceased nonresident motorist, see Note, 44 Iowa L.Rev. 384 (1959). It is, however, a much broader provision. * * *

Part 4 of the [chapter] deals with the res judicata effect to be given adjudications for or against a foreign personal representative. Any such adjudication is to be con-

clusive on a local personal representative "unless it resulted from fraud or collusion . . . to the prejudice of the estate." This provision must be read with section [91A-3-408] which deals with certain out-of-state findings concerning a decedent's estate.

Part 1—Definitions

Section
91A-4-101. Definitions.

91A-4-101. Definitions. In this article:

(1) "Local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings described in Chapter 3.

(2) "Local personal representative" includes any personal representative appointed in this state pursuant to appointment proceedings described in Chapter 3 and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 91A-4-207.

(3) "Resident creditor" means a person domiciled in, or doing business in this state, who is, or could be, a claimant against an estate of a nonresident decedent.

History: En. 91A-4-101 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The compiler substituted the references to "Chapter 3" for references to "Article III" in subdivisions (1) and (2) and substituted the reference to "section 91A-4-207" for an apparently erroneous reference to "section 91A-4-205" at the end of subdivision (2).

Editorial Board Comment

Section [91A-1-201] includes definitions of "foreign personal representative," "personal representative" and "nonresident decedent."

Part 2—Powers of Foreign Personal Representatives

Section
91A-4-201. Filing letters and inventory with local district court—copy to department of revenue.
91A-4-202. Determination of inheritance taxes—certificate of department of revenue showing taxes paid, waived or bond posted.
91A-4-203. Right to inspect estate assets for inventory.
91A-4-204. Payment of debt and delivery of property to domiciliary foreign personal representative without local administration.
91A-4-205. Payment or delivery discharges.
91A-4-206. Resident creditor notice—court order.
91A-4-207. Powers of domiciliary foreign personal representative generally—powers as special administrator.
91A-4-208. Powers of representatives in transition.
91A-4-209. Ancillary and other local administrations—provisions governing.

91A-4-201. Filing letters and inventory with local district court—copy to department of revenue. (1) The domiciliary foreign personal representative of the estate of a nonresident decedent who wishes to receive payment and delivery as described in section 91A-4-204 or to exercise the powers over assets described in section 91A-4-207 shall file in duplicate with a district court in this state in a county in which property belonging to the decedent is located authenticated copies of his appointment and of any official bond he has given, an inventory and appraisal of the property of the nonresident decedent located in this state, which inventory shall con-

tain the information prescribed in section 91A-3-706, and an affidavit stating

(a) the date of death of the nonresident decedent, and

(b) that no local administration or application or petition therefor is pending in this state.

(2) Upon receiving the information required by subsection (1), the clerk of court shall issue a certificate to the domiciliary foreign personal representative identifying him as having registered with the district court and stating the name and date of death of the decedent.

(3) The clerk shall also immediately forward a copy of the appointment, affidavit and inventory and appraisal required by subsection (1) to the department of revenue.

History: En. 91A-4-201 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

This section is not part of the Uniform Probate Code as promulgated by the National Conference of Commissioners.

91A-4-202. Determination of inheritance taxes—certificate of department of revenue showing taxes paid, waived or bond posted. (1) The department of revenue shall determine what inheritance tax, if any, is owing on the property of the nonresident decedent located in this state and shall send notice of the tax owing to the domiciliary foreign personal representative and to the clerk of court.

(2) Upon payment of the inheritance tax due, or if no tax is owing, the department of revenue shall issue a certificate to the domiciliary foreign personal representative indicating that inheritance taxes either are not owing or have been paid and shall send a copy of the certificate to the clerk of court.

(3) The department may issue an order waiving inheritance taxes on a particular item of property under such terms and circumstances as the department shall determine.

(4) Upon the posting by the domiciliary foreign personal representative of satisfactory bond, the department may issue a certificate indicating that bond has been posted sufficient to secure any inheritance tax due on the in-state property of the nonresident decedent. This certificate may be issued at any time after the filing of the inventory with the clerk of court.

History: En. 91A-4-202 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

This section is not part of the Uniform Probate Code as promulgated by the National Conference of Commissioners.

91A-4-203. Right to inspect estate assets for inventory. Any person holding any property of a nonresident decedent, including any instrument evidencing a debt, obligation, stock or chose in action, shall permit the domiciliary foreign personal representative of the nonresident decedent to inspect and appraise the property for purposes of completing the inventory and appraisal called for in section 91A-4-201(1) upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating

(1) the date of death of the nonresident decedent,

(2) that no local administration or application or petition therefor is pending in this state, and

(3) that the domiciliary foreign personal representative is entitled to make such inspection and appraisal.

History: En. 91A-4-203 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

This section is not part of the Uniform Probate Code as promulgated by the National Conference of Commissioners.

91A-4-204. Payment of debt and delivery of property to domiciliary foreign personal representative without local administration. At any time after the expiration of sixty (60) days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with a certificate from the clerk of the court for the county where the domiciliary foreign personal representative has filed his affidavit as described in section 91A-4-201 and a certificate from the department of revenue, as described in section 91A-4-202.

History: En. 91A-4-204 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 4-201; the Montana enactment rewrote the section after the words "being presented with" which in the official text reads as follows: "proof of his appointment and affidavit may by or on behalf of the representative stating:

"(1) the date of the death of the nonresident decedent,

"(2) that no local administration, or application or petition therefor, is pending in this state,

"(3) that the domiciliary foreign personal representative is entitled to payment or delivery."

Editorial Board Comment

Section [91A-3-201(4)] refers to the location of tangible personal estate and intangible personal estate which may be evidenced by an instrument. The instant section includes both categories. Transfer of securities is not covered by this section since that is adequately covered by Section 3 of the Uniform Act for Simplification of Fiduciary Security Transfers.

91A-4-205. Payment or delivery discharges. Payment or delivery made in good faith on the basis of the certificate of the clerk of court and the certificate of the department of revenue releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

History: En. 91A-4-205 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 4-202; the Montana enactment substituted "certificate of the clerk of court and the certificate of the department of revenue" for "proof of authority and affidavit" in the official text.

91A-4-206. Resident creditor notice—court order. (1) Payment or delivery under section 91A-4-204 may not be made if a resident creditor of the

nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

(2) In cases under subsection (1) the foreign personal representative must seek an order of the court in which he has filed his affidavit to obtain payment or delivery unless the notification by the resident creditor is withdrawn.

History: En. 91A-4-206 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 4-203; the Montana enactment added the provisions of subsection (2).

Editorial Board Comment

Similar to provision in Colorado Revised Statute, 153-6-9.

DECISIONS UNDER FORMER LAW

Death of Both Parents

In custody dispute between maternal grandparents and father of children whose mother died prior to action, where father to whom children were awarded also died pending hearing on motion for new trial, maternal grandparents who had filed motion for new trial and who had already been determined by court to be fit and proper persons for custody of children would have been entitled to custody without new trial but for second wife of deceased husband who was entitled to hearing on petition to intervene as party to whom deceased father wished children to go. State ex rel. Ross v. District Court, 4th Judicial Dist., 150 M 233, 433 P 2d 778.

91A-4-207. Powers of domiciliary foreign personal representative generally—powers as special administrator. (1) Except as limited by section 91A-4-206, a domiciliary foreign personal representative who has complied with sections 91A-4-201 and 91A-4-202, may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

(2) A domiciliary foreign personal representative who has complied with all the requirements of section 91A-4-201(1) except for the filing of an inventory and appraisal, may, when necessary to protect the estate of the decedent and upon appointment by the clerk of court, exercise the powers of a special administrator described in sections 91A-3-614 through 91A-3-618.

History: En. 91A-4-207 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 4-205 and reads as follows: "A domiciliary foreign personal representative who has complied with section 4-204 may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally."

91A-4-208. Powers of representatives in transition. The power of a domiciliary foreign personal representative under section 91A-4-204 or 91A-4-207 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 91A-4-207, but the local court may allow the

foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

History: En. 91A-4-208 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 4-206.

91A-4-209. Ancillary and other local administrations—provisions governing. In respect to a nonresident decedent, the provisions of this code govern (1) proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and

(2) the status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.

History: En. 91A-4-209 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 4-207; the Montana enactment substituted "of this code" for "Article III of this code" in subdivision (1).

Editorial Board Comment

The purpose of this section is to direct attention to Article III [reference omitted in Montana]. for sections controlling local probates and administrations. * * *

DECISIONS UNDER FORMER LAW

Failure to File Inventory

Court on own motion could require guardian to appear and account for funds in his possession, where he had neglected to file inventory and appraisement within three-month period as required by statute, notwithstanding the parties to action were still before court. State ex rel. Ross v. District Court, 4th Judicial Dist., 150 M 233, 433 P 2d 778.

Part 3—Jurisdiction over Foreign Representatives

Section
91A-4-301. Jurisdiction by act of foreign personal representative.
91A-4-302. Jurisdiction by act of decedent.
91A-4-303. Service on foreign personal representative.

91A-4-301. Jurisdiction by act of foreign personal representative. A foreign personal representative by doing any of the acts described in sections 91A-4-201 through 91A-4-207, or by doing any act as a personal representative in this state that would have given the state jurisdiction over him as an individual, submits himself personally to the jurisdiction of the courts of this state in any proceeding relating to the estate.

Jurisdiction which arises solely from receiving payment of money or taking delivery of personal property is limited to the money or value of personal property collected.

History: En. 91A-4-301 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners reads as follows: "A foreign personal representative submits himself to the jurisdiction of the courts of this state by (1) filing authenticated copies of his appointment as provided in section 4-204, (2) receiving payment of money or taking delivery of personal property under section 4-201, or (3) doing any act as a personal representative in this state which would have given this state jurisdiction over him as an individual. Jurisdiction under (2) is limited to the money or value of personal property collected."

Editorial Board Comment

The words "courts of this state" are sufficient under federal legislation to include a federal court having jurisdiction in the adopting state.

A foreign personal representative appointed at the decedent's domicile has priority for appointment in any local administration proceeding. See section [91A-3-203(7)]. Once appointed, a local personal representative remains subject to the jurisdiction of the appointing court under section [91A-3-602].

91A-4-302. Jurisdiction by act of decedent. In addition to jurisdiction conferred by section 91A-4-301, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.

History: En. 91A-4-302 by Sec. 1, Ch. 365, L. 1974.

91A-4-303. Service on foreign personal representative. (1) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to his last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.

(2) If service is made upon a foreign personal representative as provided in subsection (1), he shall be allowed at least thirty (30) days within which to appear or respond.

History: En. 91A-4-303 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The provision for ordinary mail as a substitute for registered or certified mail is provided because, under the present postal regulations, registered mail may not be available to reach certain addresses, 39 C.F.R. Sec. 51.3(c), and also certified mail may not be available as a process for service because of the method of delivery used, 39 C.F.R. Sec. 58.5(c) (rural delivery) and (d) (star route delivery).

Part 4—Judgments and Personal Representative

Section
91A-4-401. Effect of adjudication for or against personal representative.

91A-4-401. Effect of adjudication for or against personal representative. An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

History: En. 91A-4-401 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Adapted from Uniform Ancillary Administration of Estates Act, Section 8.

CHAPTER 5

PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

Part
1. General provisions, 91A-5-101 to 91A-5-104.
2. Guardians of minors, 91A-5-201 to 91A-5-212.
3. Guardians of incapacitated persons, 91A-5-301 to 91A-5-314.
4. Protection of property of persons under disability and minors, 91A-5-401 to 91A-5-431.
5. Powers of attorney, 91A-5-501, 91A-5-502.

EDITORIAL BOARD COMMENT

[Chapter 5] * * * embodies separate systems of guardianship to protect persons of minors and mental incompetents. It also includes provisions for a type of power of attorney that does not terminate on disability of the principal which may be used by adults approaching senility or incompetence to avoid the necessity for other kinds of protective regimes. Finally, Part 4 of the [chapter] offers a system of protective proceedings, including conservatorships, to provide for the management of substantial aggregations of property of persons who are, for one reason or another, including minority and mental incompetence, unable to manage their own property.

It should be emphasized that the [chapter] contains many provisions designed to minimize or avoid the necessity of guardianship and protective proceedings, as well as provisions designed to simplify and minimize arrangements which become necessary for care of persons or their property. The power of attorney which confers authority notwithstanding later incompetence is one example of the former. Another is a facility of payment provision which permits relatively small sums owed to a minor to be paid whether or not there is a guardian or other official who has been designated to act for the minor. A new device tending to simplify necessary protective proceedings, is found in provisions in Part 4 which permit a judge to make appropriate orders concerning the property of a disabled person without appointing a fiduciary.

The highspots of the several parts of [Chapter 5], considered in somewhat more detail, include the following:

(a) The facility of payment clause, which is section [91A-5-103], permits one owing up to $5,000 per year to a minor to be validly discharged by payment to the minor, if he is over eighteen or married, to the minor's parent or grandparent or other adult with whom the minor resides, to a guardian, or by deposit in an account in the name of the minor.

(b) A provision in Part 2 permits the surviving parent of a minor to designate a guardian by will. A similar provision in Part 3 authorizes a parent or spouse to designate a guardian for an incapacitated person by will. Such designation becomes effective upon probate of the will and the filing of an acceptance by the guardian. Thereafter the status of guardian and ward arises. It is like guardianship of the person, rather than of estate. It is described as a parental relationship without the parental obligation of support. The relationship follows the guardian and ward and is properly recognized and implemented, as and when necessary, by the courts of any jurisdiction where these persons may be located. No requirement of periodic reports or accounts is imposed on a testamentary guardian. The question of his proper expenditure of the small sums which he may receive for the ward is left to be settled by the guardian and ward after the ward attains full age. If the amounts involved become more than the guardian cares to be responsible for on this basis, he or any other interested person may seek the appointment of a property manager who is called a "conservator" by the code. The guardian may be eligible to be appointed to this position.

Part 2 also permits a testamentary guardian of a minor to receive and expend sums payable to the minor for the minor's support and education without court order. He may not pay himself for services, however, and is under a duty to deposit excess funds, or to seek a suitable property-protection order if other management is needed.

(c) A parent or guardian is permitted to delegate his authority for short periods as necessitated by anticipated absence or incapacity.

(d) As previously mentioned, Part 4 . . . deals with protective proceedings designed to permit substantial property interests of minors and others unable prop-

erly to manage their own affairs to be controlled by court order or managed by a conservator appointed by the court. The causes for inability of owner-management that are listed by the statute are quite broad. Technical incompetency is but one of several reasons why one may be unable to manage his affairs. See section [91A-5-401(2)]. The draftsmen's view was that reliance should be placed on the fact that the court applying the statute would be a full power court and on the various procedural safeguards, including a right to jury trial, to protect against unwise use of the proceedings, rather than to attempt to state and rely upon a narrow or technical test of lack of ability.

Section [91A-5-409] is important, for it makes it clear that a court entertaining a protective proceeding has full power, through its orders, to do anything the protected person himself might have done if not disabled. Another provision broadens the form of relief so that the court may handle a single transaction, like renewal of a mortgage, or a sale and related investment of proceeds, which is recommended in respect to the affairs of a protected person directly by its orders rather than through the appointment of a conservator.

(e) If a conservator is appointed, provisions in Part 4 of the draft give him broad powers of management that may be exercised without a court order. On the other hand, provision is made for restricting the managerial or distribution powers of a conservator, provided notation of the restriction appears on his letters of appointment. Unless restricted, the fiduciary may be able to distribute and end the arrangement without court order if he can meet the terms of the Act. Among other kinds of expenditures and disbursements authorized, payments for the support and education of the protected person as determined by a guardian of the protected person, if any, or by the conservator, if there is no guardian, are approved. Also, certain payments for the support of dependents of the protected person are approved by the code and hence would require no special approval.

(f) Other provisions in Part 4 round out the relationship of protective proceedings to creditors of the protected person and persons who deal with a conservator. Claims are handled by the conservator who is given a fiduciary responsibility to claimants and suitable discretion concerning allowance. If questions arise, the appointing court has all needed power to deal with disputes with creditors. The draft changes the common-law rule that contracts of a guardian are his personal responsibility. A conservator is not liable personally on contracts made for the estate unless he agrees to such liability. A section buttresses the managerial powers given to conservator by protecting all persons who deal with them.

(g) Another section seeks to reduce the importance of state lines in respect to the authority of conservators by permitting appointees of foreign courts to act locally. Also, it follows the pattern of [Chapter 3] dealing with ancillary administration of decedents' estates by giving the conservator appointed at the domicile of the protected person priority for appointment locally in case local administration of a protected person's assets becomes necessary.

(h) The many states which have adopted the Uniform Veterans Guardianship Act [secs. 91-4801 et seq., repealed effective July 1, 1975] now have two systems for protection of the property of minors and mental incompetents, one of which applies if the property was derived, in whole or in part, from benefits paid by the Veterans Administration and its minor or incompetent owner is or has been a beneficiary of the Veterans Administration, and the other of which applies to all other property. It is sometimes difficult to ascertain whether a person has ever received a benefit from the Veterans Administration and commonly impossible to determine whether property was derived in part from benefits paid by the Veterans Administration. Part 4 would provide a single system for the protection of property of minors and others unable to manage their own property, thus superseding the Uniform Veterans Guardianship Act. It would preserve the right of the Veterans Administration to appear in protective proceedings involving the property of its beneficiaries and would permit the imposition of the same safeguards provided by the superseded Uniform Veterans Guardianship Act.

Part 1—General Provisions

Section
91A-5-101. Definitions and use of terms.
91A-5-102. Jurisdiction of subject matter—consolidation of proceedings.
91A-5-103. Facility of payment or agreement.
91A-5-104. Delegation of powers by parent or guardian.

91A-5-101. Definitions and use of terms. Unless otherwise apparent from the context, in this code:

(1) "incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect to his need for treatment;

(2) "protective proceeding" means a proceeding under the provisions of section 91A-5-401 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;

(3) "protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made;

(4) "ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

History: En. 91A-5-101 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 514, L. 1977.

Editorial Board Comment

"Conservator," "estate," "guardian," and "minor," and other terms having relevance to [Chapter 5], are defined in [91A-1-201]. "Disability" as defined in section [91A-1-201(10)] keys to an adjudication for the causes listed in section [91A-5-401]. The definition of "incapacitated" on the other hand contains the bases for appointment of a guardian under section 91A-5-303].

Amendments

The 1977 amendment added "or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect to his need for treatment" at the end of subdivision (1).

91A-5-102. Jurisdiction of subject matter—consolidation of proceedings. (1) The court has jurisdiction over protective proceedings and guardianship proceedings.

(2) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

History: En. 91A-5-102 by Sec. 1, Ch. 365, L. 1974.

91A-5-103. Facility of payment or agreement. Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding five thousand dollars ($5,000) per annum, by paying or delivering the money or property to:

(1) the minor, if he has attained the age of eighteen (18) years or is married;

(2) any person having the care and custody of the minor with whom the minor resides;

(3) a guardian of the minor; or

(4) a financial institution incident to a deposit in a federally insured

savings account in the sole name of the minor and giving notice of the deposit to the minor.

This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution under (4) above, receiving money or property for a minor, are obligated to apply the money to the support and education of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor and any balance not so used and any property received for the minor must be turned over to the minor when he attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

History: En. 91A-5-103 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Where a minor has only a small amount of property, it would be wasteful to require protective proceedings to deal with the property. This section makes it possible for other persons, such as the guardian, to handle the less complicated property affairs of the ward. Protective proceedings, including the possible establishment of a conservatorship, will be sought where substantial property is involved.

This section does not go as far as many facility of payment provisions found in trust instruments which usually permit application of sums due minor beneficiary to any expense or charge for the minor. It was felt that a grant of so large an area of discretion to any category of person who might owe funds to a minor would be unwise. Nonetheless, the section as drafted should reduce the need for trust facility of payment provision somewhat, while extending opportunities to insurance companies and other debtors to minors for relatively simple methods of gaining discharge.

91A-5-104. Delegation of powers by parent or guardian. A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six (6) months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.

History: En. 91A-5-104 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section permits a temporary delegation of parental powers. For example, parents (or guardian) of a minor plan to be out of the country for several months. They wish to empower a close relative (an uncle, e.g.) to take any necessary action regarding the child while they are away. Using this section, they could execute an appropriate power of attorney giving the uncle custody and power to consent. Then if an emergency operation were required, the uncle could consent on behalf of the child; as a practical matter he would of course attempt to communicate with the parents before acting. The section is designed to reduce problems relating to consents for emergency treatment.

Part 2—Guardians of Minors

Section

91A-5-201. Status of guardian of minor—general.
91A-5-202. Testamentary appointment of guardian of minor.
91A-5-203. Objection by minor of fourteen (14) or older to testamentary appointment.
91A-5-204. Court appointment of guardian of minor—conditions for appointment.
91A-5-205. Court appointment of guardian of minor—venue.
91A-5-206. Court appointment of guardian of minor—qualifications—priority of guardian's nominee.

91A-5-207. Court appointment of guardian of minor—procedure.
91A-5-208. Consent to service by acceptance of appointment—notice.
91A-5-209. Powers and duties of guardian of minor.
91A-5-210. Termination of appointment of guardian—general.
91A-5-211. Proceedings subsequent to appointment—venue.
91A-5-212. Resignation or removal proceedings.

91A-5-201. Status of guardian of minor—general. A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

History: En. 91A-5-201 by Sec. 1, Ch. 365, L. 1974.

91A-5-202. Testamentary appointment of guardian of minor. The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under section 91A-5-203, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care or to his nearest adult relations.

History: En. 91A-5-202 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The Montana enactment added the last sentence of this section.

91A-5-203. Objection by minor of fourteen (14) or older to testamentary appointment. A minor of fourteen (14) or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within thirty (30) days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person.

History: En. 91A-5-203 by Sec. 1, Ch. 365, L. 1974.

91A-5-204. Court appointment of guardian of minor—conditions for appointment. The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. A guardian appointed by will as provided in section 91A-5-202 whose appointment has not been prevented or nullified under 91A-5-203 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary ap-

pointment within thirty (30) days after notice of the guardianship proceeding.

History: En. 91A-5-204 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The words "all parental rights of custody" are to be read with sections [91A-5-201 and 91A-5-209] which give testamentary and court-appointed guardians of minors certain parental rights respecting the minor. Hence, no authority to appoint a guardian for a minor exists if a testamentary guardian has accepted an effective appointment by will. The purpose of this restriction is to support and encourage testamentary appointments which may occur without judicial act. If a testamentary guardian proves to be unsatisfactory, removal proceedings as provided in section [91A-5-211] may be used if the objection device of section [91A-5-203] is unavailable.

91A-5-205. Court appointment of guardian of minor—venue. The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

History: En. 91A-5-205 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Section [91A-1-303] provides for conflicts of venue and for transfer of venue.

91A-5-206. Court appointment of guardian of minor—qualifications—priority of guardian's nominee. The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen (14) years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

History: En. 91A-5-206 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Rather than provide for priorities among various classes of relatives, it was felt that the only priority should be for the person nominated by the minor. The important point is to locate someone whose appointment will be in the best interests of the minor. If there is contention among relatives over who should be named, it is not likely that a statutory priority keyed to degrees of kinship would help resolve the matter. For example, if the argument involved a squabble between relatives of the child's father and relatives of its mother, priority in terms of degrees of kinship would be useless.

Guardianships under this code are not likely to be attractive positions for persons who are more interested in handling a minor's estate than in his personal well-being. An order of a court having equity power is necessary if the guardian is to receive payment for services where there is no conservator for the minor's estate. Also, the powers of management of a ward's estate conferred on a guardian are restricted so that if a substantial estate is involved, a conservator will be needed to handle the financial matters.

91A-5-207. Court appointment of guardian of minor—procedure. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 91A-1-401 to:

(a) the minor, if he is fourteen (14) or more years of age;

(b) the person who has had the principal care and custody of the minor during the sixty (60) days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 91A-5-204 have been met, and the welfare and best

interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

(3) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six (6) months.

(4) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen (14) years of age or older.

History: En. 91A-5-207 by Sec. 1, Ch. 365, L. 1974.

91A-5-208. Consent to service by acceptance of appointment—notice. By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

History: En. 91A-5-208 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The "long-arm" principle behind this section is well established. It seems desirable that the court in which acceptance is filed be able to serve its process on the guardian wherever he has moved. The continuing interest of that court in the welfare of the minor is ample to justify this provision. The consent to service is real rather than fictional in the guardianship situation, where the guardian acts voluntarily in filing acceptance. It is probable that the form of acceptance will expressly embody the provisions of this section, although the statute does not expressly require this.

91A-5-209. Powers and duties of guardian of minor. A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(1) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(2) He may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He also may receive money or property of the ward paid or delivered by virtue of section 91A-5-103. Any sums so received shall be applied to the ward's current needs for support, care and education. He must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the

ward, in which case excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of his ward.

(4) A guardian must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule.

History: En. 91A-5-209 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

See section [91A-5-212]. See, also, section [91A-5-424(1)] which confers the powers of a guardian on a conservator who is responsible for the estate of a minor under eighteen for whom no guardian has been named.

91A-5-210. Termination of appointment of guardian—general. A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

History: En. 91A-5-210 by Sec. 1, Ch. 365, L. 1974.

91A-5-211. Proceedings subsequent to appointment—venue. (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

History: En. 91A-5-211 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Under section [91A-1-302], the court is designated as the proper court to handle matters relating to guardianship. The present section is intended to give jurisdiction to the forum where the ward resides as well as to the one where appointment initiated. This has primary importance where the ward's residence has

been moved from the appointing state. Because the court where acceptance of appointment is filed may as a practical matter be the only forum where jurisdiction over the person of the guardian may be obtained (by reason of section [91A-5-208]), that court is given concurrent jurisdiction.

91A-5-212. Resignation or removal proceedings. (1) Any person interested in the welfare of a ward, or the ward, if fourteen (14) or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen (14) or more years of age.

History: En. 91A-5-212 by Sec. 1, Ch. 365, L. 1974.

Part 3—Guardians of Incapacitated Persons

Section
91A-5-301. Testamentary appointment of guardian for incapacitated person.
91A-5-302. Venue.
91A-5-303. Procedure for court appointment of a guardian of an incapacitated person.
91A-5-304. Findings—order of appointment.
91A-5-305. Acceptance of appointment—consent to jurisdiction.
91A-5-306. Termination of guardianship for incapacitated person.
91A-5-307. Removal or resignation of guardian—termination of incapacity.
91A-5-308. Visitor in guardianship proceedings.
91A-5-309. Notices in guardianship proceedings.
91A-5-310. Temporary guardians.
91A-5-311. Who may be guardian—priorities.
91A-5-312. General powers and duties of guardian.
91A-5-313. Proceedings subsequent to appointment—venue.
91A-5-314. Court order for evaluation or treatment.

91A-5-301. Testamentary appointment of guardian for incapacitated person. (1) The parent of an incapacitated person may by will appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given seven (7) days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, if prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.

(2) The spouse of a married incapacitated person may by will appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given seven (7) days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a

parent unless it is terminated by the denial of probate in formal proceedings.

(3) This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

(4) On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the sections 91A-5-302 through 91A-5-313, inclusive.

History: En. 91A-5-301 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section, modeled after section [91A-5-205], is designed to give the surviving parent, or the spouse, of an incapacitated person, the ability to confer the authority of a guardian on a person designated by will. This opportunity may be most useful in cases where parents, during their lifetime, have arranged an informal or voluntary commitment of an incompetent child, and are anxious to designate another who can maintain contact with the patient and act on his behalf without the necessity of a sanity hearing. The person designated by will must act by filing acceptance of the appointment. This provides a check against will directions which might prove to be unwise or unnecessary after the parents' death. Moreover, the testamentary designee will have the risk of the possibility that the ward is not in fact incapacitated to prevent him from using the authority conferred to restrain the liberty of the ward. In cases of doubt, the testamentary appointee should petition for a court appointment under section [91A-5-303].

91A-5-302. Venue. The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

History: En. 91A-5-302 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Venue in guardianship proceedings lies in the county where the incapacitated person is present, as well as where he resides. Thus, if the person is temporarily away from his county of usual abode, the court of the county where he happens to be may handle requests for guardianship proceedings relating to him. In protective proceedings, venue is normally in the county of residence. See section [91A-5-403]. See section [91A-1-303] for disposition when venue is in two counties, and for transfer of venue.

91A-5-303. Procedure for court appointment of a guardian of an incapacitated person. (1) The incapacitated person or any person interested in his welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of his own choice or the court may, in the interest of justice, appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and be interviewed by a visitor sent by the court. The visitor also shall interview the person seeking appointment as guardian, and visit the present place of abode of

the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or his counsel so requests.

History: En. 91A-5-303 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 222, L. 1977; amd. Sec. 2, Ch. 514, L. 1977.

Editorial Board Comment

The procedure here is similar to, but not precisely the same as, protective proceedings for certain disabled persons. It is not required that the visitor be a lawyer. In urban areas, the visitor may be a social worker capable of determining the needs of the person for whom the appointment is sought. By brackets, the National Conference indicates that enacting states should decide whether it is appropriate to create a right to jury trial. [Montana provides a right to jury trial.]

Compiler's Notes

This section was amended twice in 1977, once by Ch. 222 and once by Ch. 514. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 222, Laws of 1977, substituted the first two sentences in subsection (2) for a sentence which read: "Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity, and unless the allegedly incapacitated person has counsel of his own choice, appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem."

Chapter 514, Laws of 1977, inserted "including the county attorney" in subsection (1).

91A-5-304. Findings—order of appointment. The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.

History: En. 91A-5-304 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The purpose of guardianship is to provide for the care of a person who is unable to care for himself. There is no reason to seek a guardian in those situations where the problems to be dealt with center around the property of a disabled person. In that event, a protective proceeding under Part 4 may be in order.

It is assumed that the standards suggested by the definition in section [91A-5-101] for the "incapacitated" person are different from those which will determine when a person may be committed as mentally ill. For example, involuntary commitment proceedings may well be inappropriate unless it is determined that the patient is or probably will become dangerous to himself or the person or property of others. As indicated in [91A-5-101], the meaning of "incapacitated" turns on whether the subject lacks "understanding or capacity to make or communicate responsible decisions concerning his person." There is overlap between the two sets of standards, but they are different. Hence, a finding that a person is "incapacitated" does not amount to a finding that he is mentally ill, or can be committed. In the reverse situation, if a person has been committed to institutional care and custody because of mental illness, it may be unnecessary to appoint a guardian for him. Nonetheless, it may be desirable to have a personal guardian for one who is or may be committed or who will be cared for by an institution. For one thing, a guardian, having custody, might arrange for a voluntary care arrangement like that which a parent for a minor and incapacitated child could establish. Moreover, the limited authority of a guardian over property of his ward may be appropriate in cases where the ward is

committed. Because of the relationship between existing guardianship legislation and the handling of committed persons appears to vary considerably from state to state, the code was deliberately left rather general on points relevant to the relationship. Section [91A-5-312] qualifies the power of a guardian to determine the place of residence of a ward who has been committed.

91A-5-305. Acceptance of appointment—consent to jurisdiction. By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

History: En. 91A-5-305 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The proceedings under [Chapter 5] are flexible. The court should not appoint a guardian unless one is necessary or desirable for the care of the person. If it develops that the needs of the person who is alleged to be incapacitated are not those which would call for a guardian, the court may adjust the proceeding accordingly. By acceptance of the appointment, the guardian submits to the court's jurisdiction in much the same way as a personal representative. Cf. [section 91A-3-602].

91A-5-306. Termination of guardianship for incapacitated person. The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 91A-5-307. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

History: En. 91A-5-306 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The Montana enactment added the last sentence of this section.

91A-5-307. Removal or resignation of guardian—termination of incapacity. (1) On petition of the ward or any person interested in his welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept his resignation and make any other order which may be appropriate.

(2) An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward or any person interested in his welfare may petition for an order that he is no longer incapacitated, and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

(3) Before removing a guardian, accepting the resignation of a guardian, or ordering that a ward's incapacity has terminated, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.

History: En. 91A-5-307 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The ward's incapacity is a question that may usually be reviewed at any time. However, provision is made for a discretionary restriction on review. In all review proceedings, the welfare of the ward is paramount.

91A-5-308. Visitor in guardianship proceedings. A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing or social work and is an officer, employee or special appointee of the court with no personal interest in the proceedings.

History: En. 91A-5-308 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The visitor should have professional training and should not have a personal interest in the outcome of the guardianship proceedings.

91A-5-309. Notices in guardianship proceedings. (1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

(a) the ward or the person alleged to be incapacitated and his spouse, parents and adult children;

(b) any person who is serving as his guardian, conservator or who has his care and custody; and

(c) in case no other person is notified under (a), at least one (1) of his closest adult relatives, if any can be found.

(2) Notice shall be served personally on the alleged incapacitated person, and his spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in section 91A-1-401. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed in an interview with the visitor. Representation of the alleged incapacitated person by a guardian ad litem is not necessary.

History: En. 91A-5-309 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The persons entitled to notice in guardianship proceeding are usually fewer in number than those in a protective proceeding. Cf. [section 91A-5-405]. Required notice shall be given in accordance with the general notice provision of the code. See section [91A-1-401].

91A-5-310. Temporary guardians. If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing. If an appointed guardian is not effectively performing his duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed six (6) months. A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary guardian may be removed

at any time. A temporary guardian shall make any report the court requires. In other respects the provisions of this code concerning guardians apply to temporary guardians.

History: En. 91A-5-310 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The temporary guardian is analogous to a special administrator under sections [91A-3-614 through 91A-3-618]. His appointment would be obtained in emergency situations or as a protective device against default by a guardian. The temporary guardian has all the powers of a guardian, except as the order appointing him may provide otherwise.

91A-5-311. Who may be guardian—priorities. (1) Any competent person or a suitable institution may be appointed guardian of an incapacitated person.

(2) Persons who are not disqualified have priority for appointment as guardian in the following order:

(a) the spouse of the incapacitated person;

(b) an adult child of the incapacitated person;

(c) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(d) any relative of the incapacitated person with whom he has resided for more than six (6) months prior to the filing of the petition;

(e) a person nominated by the person who is caring for him or paying benefits to him.

History: En. 91A-5-311 by Sec. 1, Ch. 365, L. 1974.

91A-5-312. General powers and duties of guardian. (1) A guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

(a) to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this state.

(b) If entitled to custody of his ward he shall make provision for the care, comfort and maintenance of his ward and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of his ward is in need of protection.

(c) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service.

(d) If no conservator for the estate of the ward has been appointed, he may:

(i) institute proceedings to compel any person under a duty to sup-

port the ward or to pay sums for the welfare of the ward to perform his duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one (1) of the next of kin of the incompetent ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.

(e) A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule.

(f) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the guardian must account to the conservator for funds expended.

(2) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

History: En. 91A-5-312 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The guardian is responsible for the care of the person of his ward. This section gives him the powers necessary to carry out this responsibility. Where there are no protective proceedings, the guardian also has limited authority over the property of the ward. Where the ward has substantial property, it may be desirable to have protective proceedings to handle his property problems. The same person, of course, may serve as guardian and conservator. Section [91A-5-408] authorizes the court to make preliminary orders protecting the estate once a petition for appointment of a conservator is filed.

91A-5-313. Proceedings subsequent to appointment—venue. (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

History: En. 91A-5-313 by Sec. 1, Ch. 365, L. 1974.

91A-5-314. Court order for evaluation or treatment. If a guardian believes his ward should receive medical treatment for a mental disorder and the ward refuses, the court may, upon petition by the guardian, grant an order for evaluation or treatment, provided that no such order shall forcibly detain the ward against his will for more than 72 hours. The ward is entitled to an appointment of counsel and a hearing along with all the other rights guaranteed seriously mentally ill persons under 38-1304.

History: En. 91A-5-314 by Sec. 3, Ch. 514, L. 1977.

Title of Act

An act amending the definition of an incapacitated person in the Montana Uniform Probate Code; amending sections 91A-5-101 and 91A-5-303, R. C. M. 1947.

Part 4—Protection of Property of Persons Under Disability and Minors

Section

91A-5-401. Protective proceedings.
91A-5-402. Protective proceedings—jurisdiction of affairs of protected persons.
91A-5-403. Venue.
91A-5-404. Original petition for appointment or protective order.
91A-5-405. Notice.
91A-5-406. Protective proceedings—request for notice—interested person.
91A-5-407. Procedure concerning hearing and order on original petition.
91A-5-408. Permissible court orders.
91A-5-409. Protective arrangements and single transactions authorized.
91A-5-410. Who may be appointed conservator—priorities.
91A-5-411. Bond.
91A-5-412. Terms and requirements of bond.
91A-5-413. Acceptance of appointment—consent to jurisdiction.
91A-5-414. Compensation and expenses.
91A-5-415. Death, resignation or removal of conservator.
91A-5-416. Petitions for orders subsequent to appointment.
91A-5-417. Conservator to act as fiduciary.
91A-5-418. Inventory and records.
91A-5-419. Accounts.
91A-5-420. Conservators—title by appointment.
91A-5-421. Recording conservator's letters.
91A-5-422. Sale, encumbrance or transaction involving conflict of interest—voidable—exceptions.
91A-5-423. Persons dealing with conservators—protection.
91A-5-424. Powers of conservator in administration.
91A-5-425. Distributive powers and duties of conservator.
91A-5-426. Enlargement or limitation of powers of conservator.
91A-5-427. Preservation of estate plan.
91A-5-428. Claims against protected person—enforcement.
91A-5-429. Individual liability of conservator.
91A-5-430. Termination of conservatorship.
91A-5-431. Payment of debt and delivery of property to foreign conservator without local proceedings.

91A-5-401. Protective proceedings. Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that

(a) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and

(b) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.

History: En. 91A-5-401 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This is the basic section of this part providing for protective proceedings for minors and disabled persons. "Protective proceedings" is a generic term used to describe proceedings to establish conservatorships and obtain protective orders. "Disabled persons" is used in this section to include a broad category of persons who, for a variety of different reasons, may be unable to manage their own property. Since the problems of property management are generally the same for minors and disabled persons, it was thought undesirable to treat these problems in two separate parts. Where there are differences, these have been separately treated in specific sections.

The Comment to section [91A-5-304], supra, points up the different meanings of **incapacity** (warranting guardianship), and **disability.**

91A-5-402. Protective proceedings—jurisdiction of affairs of protected persons. After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended or distributed to or for the use of the protected person or any of his dependents;

(3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

History: En. 91A-5-402 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

While the bulk of all judicial proceedings involving the conservator will be in the court supervising the conservatorship third parties may bring suit against the conservator or the protected person on some matters in other courts. Claims against the conservator after his appointment are dealt with by section [91A-5-428].

91A-5-403. Venue. Venue for proceedings under this part is:

(1) in the place in this state where the person to be protected resides whether or not a guardian has been appointed in another place; or

(2) if the person to be protected does not reside in this state, in any place where he has property.

History: En. 91A-5-403 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Venue for protective proceedings lies in the county of residence (rather than domicile) or, in the case of the non-resident, where his property is located. Unitary management of the property is obtainable through easy transfer of proceedings (section [91A-1-303(2)]) and easy collection of assets by foreign conservators (section [91A-5-431]).

91A-5-404. Original petition for appointment or protective order. (1) The person to be protected, any person who is interested in his estate, affairs or welfare including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

(2) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

History: En. 91A-5-404 by Sec. 1, Ch. 365, L. 1974.

91A-5-405. Notice. (1) On a petition for appointment of a conservator or other protective order, the person to be protected and his spouse or, if none, his parents, must be served personally with notice of the proceeding at least fourteen (14) days before the date of hearing if they can be found within the state, or, if they cannot be found within the state, they must be given notice in accordance with section 91A-1-401. Waiver by the person to be protected is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

(2) Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 91A-5-406 and to interested persons and other persons as the court may direct. Except as otherwise provided in (1), notice shall be given in accordance with section 91A-1-401.

History: En. 91A-5-405 by Sec. 1, Ch. 365, L. 1974.

91A-5-406. Protective proceedings — request for notice — interested person. Any interested person who desires to be notified before any order is made in a protective proceeding may file with the clerk a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed. A request is not effective unless it contains a statement

showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

History: En. 91A-5-406 by Sec. 1, Ch. 365, L. 1974.

91A-5-407. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen (14) years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing.

Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

History: En. 91A-5-407 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The section establishes a framework within which professionals, including the judge, attorney and physician, if any, may be expected to exercise good judgment in regard to the minor or disabled person who is the subject of the proceeding. The National Conference accepts that it is desirable to rely on professionals rather than to attempt to draft detailed standards or conditions for appointment.

91A-5-408. Permissible court orders. The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for his benefit or the benefit of his dependents.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without

other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family and members of his household.

(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to, power to make gifts, to convey or release his contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise his rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his right to an elective share in the estate of his deceased spouse and to renounce any interest by testate or intestate succession or by inter vivos transfer.

(4) The court may exercise or direct the exercise of, its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty per cent (20%) of any year's income of the estate or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that he either is incapable of consenting or has consented to the proposed exercise of power.

(5) An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person.

History: En. 91A-5-408 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The court, which is supervising a conservatorship, is given all the powers which the individual would have if he were of full capacity. These powers are given to the court that is managing the protected person's property since the exercise of these powers has important consequences with respect to the protected person's property.

91A-5-409. Protective arrangements and single transactions authorized. (1) If it is established in a proper proceeding that a basis exists as described in section 91A-5-401 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or other transfer of property, entry into an annuity contract,

a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

(2) When it has been established in a proper proceeding that a basis exists as described in section 91A-5-401 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any contract, trust or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(3) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

History: En. 91A-5-409 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

It is important that the provision be made for the approval of single transactions or the establishment of protective arrangements as alternatives to full conservatorship. Under present law, a guardianship often must be established simply to make possible a valid transfer of land or securities. This section eliminates the necessity of the establishment of long-term arrangements in this situation.

91A-5-410. Who may be appointed conservator—priorities. (1) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(a) a conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(b) an individual or corporation nominated by the protected person if he is fourteen (14) or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(c) the spouse of the protected person;

(d) an adult child of the protected person;

(e) a parent of the protected person, or a person nominated by the will of a deceased parent;

(f) any relative of the protected person with whom he has resided for more than six (6) months prior to the filing of the petition;

(g) a person nominated by the person who is caring for him or paying benefits to him.

(2) A person in priorities (a), (c), (d), (e), or (f) may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

History: En. 91A-5-410 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

A flexible system of priorities for appointment as conservator has been provided. A parent may name a conservator for his minor children in his will if he deems this desirable.

91A-5-411. Bond. The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus one (1) year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. The court in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

History: En. 91A-5-411 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The bond requirements for conservators are somewhat more strict than the requirements for personal representatives. Cf. section [91A-3-603].

91A-5-412. Terms and requirements of bond. (1) The following requirements and provisions apply to any bond required under section 91A-5-411:

(a) unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;

(b) by executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;

(c) on petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;

(d) the bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

History: En. 91A-5-412 by Sec. 1, Ch. 365, L. 1974.

91A-5-413. Acceptance of appointment—consent to jurisdiction. By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may

be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

History: En. 91A-5-413 by Sec. 1, Ch. 365, L. 1974.

91A-5-414. Compensation and expenses. If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

History: En. 91A-5-414 by Sec. 1, Ch. 365, L. 1974.

91A-5-415. Death, resignation or removal of conservator. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. A conservator so appointed succeeds to the title and powers of his predecessor.

History: En. 91A-5-415 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners contains a second sentence reading: "After his death, resignation or removal the court may appoint another conservator."

91A-5-416. Petitions for orders subsequent to appointment. (1) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order

(a) requiring bond or security or additional bond or security, or reducing bond,

(b) requiring an accounting for the administration of the trust,

(c) directing distribution,

(d) removing the conservator and appointing a temporary or successor conservator, or

(e) granting other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

(3) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

(4) For purposes of this section, any person, institution or agency which is furnishing or supplying any money for support or care of a person for whom a conservator has been appointed is a person interested in the welfare of such protected person.

History: En. 91A-5-416 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The Montana enactment added the provision designated as subsection (4).

Editorial Board Comment

Once a conservator has been appointed, the court supervising the trust acts only upon the request of some moving party.

91A-5-417. Conservator to act as fiduciary. In the exercise of his powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees.

History: En. 91A-5-417 by Sec. 1, Ch. 365, L. 1974.

91A-5-418. Inventory and records. Within ninety (90) days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with his oath or affirmation that it is complete and accurate so far as he is informed. The conservator shall provide a copy thereof to the protected person if he can be located, has attained the age of fourteen (14) years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. The conservator shall keep suitable records of his administration and exhibit the same on request of any interested person.

History: En. 91A-5-418 by Sec. 1, Ch. 365, L. 1974.

91A-5-419. Accounts. Every conservator must account to the court for his administration of the trust upon his resignation or removal, and at other times as the court may direct. On termination of the protected person's minority or disability, a conservator may account to the court, or he may account to the former protected person or his personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

History: En. 91A-5-419 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The persons who are to receive notice of intermediate and final accounts will be identified by court order as provided in section [91A-5-405(2)]. Notice is given as described in [91A-1-401]. In other respects, procedures applicable to accountings will be as provided in court rule.

91A-5-420. Conservators—title by appointment. The appointment of a conservator vests in his title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact. The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

History: En. 91A-5-420 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section permits independent administration of the property of protected persons once the appointment of a conservator had been obtained. Any interested person may require the conservator to account in accordance with section [91A-5-419]. As a trustee, a conservator holds title to the property of the protected person. The appointment of a conservator is a serious matter and the court must select him with great care. Once appointed, he is free to carry on his fiduciary responsibilities. If he should default in these in any way, he may be made to account to the court.

Unlike a situation involving appointment of a guardian, the appointment of a conservator has no bearing on the capacity of the disabled person to contract or engage in other transactions.

91A-5-421. Recording conservator's letters. Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person, or his successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship, and orders terminating conservatorships, may be filed or recorded to give record notice of title as between the conservator and the protected person.

History: En. 91A-5-421 by Sec. 1, Ch. 365, L. 1974.

91A-5-422. Sale, encumbrance or transaction involving conflict of interest—voidable—exceptions. Any sale or encumbrance to a conservator, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

History: En. 91A-5-422 by Sec. 1, Ch. 365, L. 1974.

91A-5-423. Persons dealing with conservators—protection. A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in section 91A-5-408, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in section 91A-5-426 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

History: En. 91A-5-423 by Sec. 1, Ch. 365, L. 1974.

91A-5-424. Powers of conservator in administration. (1) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of eighteen (18) years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 91A-5-209 until the minor attains the age of eighteen (18) or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by sections 91A-5-201 through 91A-5-212, inclusive.

(2) A conservator has power without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(3) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation, to

(a) collect, hold and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(b) receive additions to the estate;

(c) continue or participate in the operation of any business or other enterprise;

(d) acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(e) invest and reinvest estate assets in accordance with subsection (2);

(f) deposit estate funds in a bank including a bank operated by the conservator;

(g) acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(h) make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(i) subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;

(j) enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;

(k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;

(m) vote a security, in person or by general or limited proxy;

(n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(p) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(q) insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;

(r) borrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person for advances so made;

(s) pay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;

(u) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(v) pay any sum distributable to a protected person or a dependent of the person who is a minor or incompetent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person;

(w) employ persons, including attorneys, auditors, investment advisers, or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one (1) or more agents to perform any act of administration, whether or not discretionary;

(x) prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and

(y) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

History: En. 91A-5-424 by Sec. 1, Ch. 365, L. 1974.

91A-5-425. Distributive powers and duties of conservator. (1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care or benefit of the protected person and his dependents in accordance with the following principles:

(a) The conservator is to consider recommendations relating to the appropriate standard of support, education and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(b) The conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to

(i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him;

(ii) the accustomed standard of living of the protected person and members of his household;

(iii) other funds or sources used for the support of the protected person.

(c) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves, and who are in need of support.

(d) Funds expended under this subsection may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(2) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make in amounts which do not exceed in total for any year twenty per cent (20%) of the income from the estate.

(3) When a minor who has not been adjudged disabled under section 91A-5-401(2) attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(4) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting

all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(5) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after forty (40) days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under section 91A-3-204 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in section 91A-3-308 and sections 91A-3-601 through 91A-3-1010, inclusive, except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

History: En. 91A-5-425 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section sets out those situations wherein the conservator may distribute property or disburse funds during the continuance of or on termination of the trust. Section [91A-5-416(2)] makes it clear that a conservator may seek instructions from the court on questions arising under this section. Subsection [(5)] is derived in part from § 11.80.150 Revised Code of Washington.

91A-5-426. Enlargement or limitation of powers of conservator. Subject to the restrictions in section 91A-5-408(4), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by sections 91A-5-424 and 91A-5-425, any power which the court itself could exercise under sections 91A-5-408(2) and 91A-5-408(3). The court may, at the time of appointment or later, limit the powers of a conservator conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by section 91A-5-424 or section 91A-5-425, the limitation shall be endorsed upon his letters of appointment.

History: En. 91A-5-426 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section makes it possible to appoint a fiduciary whose powers are limited to part of the estate or who may conduct important transactions, such as sales and mortgages of land, only with special court authorization. In the latter case, a conservator would be in much the position of a guardian of property under the law currently in force in most states, except that he would have title to the property. The purpose of giving conservators title as trustees is to ensure that the pro-

visions for protection of third parties have full effect. The Veterans Administration may insist that, when it is paying benefits to a minor or disabled, the letters of conservatorship limit powers to those of a guardian under the Uniform Veteran's Guardianship Act [secs. 91-4801 et seq., repealed effective July, 1975] and require the conservator to file annual accounts.

The court may not only limit the powers of the conservator but may expand his powers so as to make it possible for him to act as the court itself might act.

91A-5-427. Preservation of estate plan. In investing the estate, and in selecting assets of the estate for distribution under subsections (1) and (2) of section 91A-5-425, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

History: En. 91A-5-427 by Sec. 1, Ch. 365, L. 1974.

91A-5-428. Claims against protected person—enforcement. (1) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

(a) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed;

(b) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within sixty (60) days after its presentation. A claim is deemed presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court. The presentation of a claim tolls any statute of limitation relating to the claim until thirty (30) days after its disallowance.

(2) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(3) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance and education of the protected

person or his dependents and existing claims for expenses of administration.

History: En. 91A-5-428 by Sec. 1, Ch. 365, L. 1974.

91A-5-429. Individual liability of conservator. (1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.

(4) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

History: En. 91A-5-429 by Sec. 1, Ch. 365, L. 1974.

91A-5-430. Termination of conservatorship. The protected person, his personal representative, the conservator or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to his successors subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected persons or his successors, to evidence the transfer.

History: En. 91A-5-430 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

The persons entitled to notice of a petition to terminate a conservatorship are identified by section [91A-5-405].

Any interested person may seek the termination of a conservatorship when there is some question as to whether the trust is still needed. In some situations (e.g., the individual who returns after being missing) it may be perfectly clear that he is no longer in need of a conservatorship.

An order terminating a conservatorship may be recorded as evidence of the transfer of title from the estate. See [section 91A-5-421].

91A-5-431. Payment of debt and delivery of property to foreign conservator without local proceedings. Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate or other like fiduciary

appointed by a court of the state or residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:

(1) that no protective proceeding relating to the protected person is pending in this state; and

(2) that the foreign conservator is entitled to payment or to receive delivery.

If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

History: En. 91A-5-431 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

Section [91A-5-410(1)(a)] gives a foreign conservator or guardian of property, appointed by the state where the disabled person resides, first priority for appointment as conservator in this state. A foreign conservator may easily obtain any property in this state and take it to the residence of the protected person for management.

Part 5—Powers of Attorney

Section
91A-5-501. When power of attorney not affected by disability.
91A-5-502. Other powers of attorney not revoked until notice of death or disability.

91A-5-501. When power of attorney not affected by disability. Whenever a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees and personal representative as if the principal were alive, competent and not disabled. If a conservator thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator has the same power the principal would have had if he were not disabled or incompetent to revoke, suspend or terminate all or any part of the power of attorney or agency.

History: En. 91A-5-501 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section permits a person who is sui juris to execute a power of attorney which will become or remain effective in the event he should later become disabled. If the court should subsequently appoint a conservator, the latter may either permit the attorney in fact to continue to act or revoke the power of attorney. The section is based in part on Code of Va. (1950), Sec. 11-9.1.

91A-5-502. Other powers of attorney not revoked until notice of death or disability. (1) The death, disability, or incompetence of any principal

who has executed a power of attorney in writing other than a power as described by section 91A-5-501, does not revoke or terminate the agency as to the attorney in fact, agent or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.

(2) An affidavit, executed by the attorney in fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

History: En. 91A-5-502 by Sec. 1, Ch. 365, L. 1974.

Editorial Board Comment

This section adopts the civil law rule that powers of attorney are not revoked on death or disability until the attorney in fact has actual knowledge of the death or disability. Provision is made for proving lack of knowledge by affidavit and the recordation of the affidavit to protect transactions that might otherwise be invalidated at common law. The section is based on Code of Va. (1950), Sec. 11-9-2.

CHAPTER 6

GENERAL PROVISIONS

Section
91A-6-101. Provisions for payment or transfer at death.
91A-6-102. Effective date.
91A-6-104. Uniform Probate Code takes precedence.

91A-6-101. Provisions for payment or transfer at death. (1) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this code does not invalidate the instrument or any provision:

(a) that money or other benefits theretofore due to, controlled or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(b) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand; or

(c) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(2) Nothing in this section limits the rights of creditors under other laws of this state.

History: En. 91A-6-101 by Sec. 1, Ch. 365, L. 1974.

Compiler's Notes

The corresponding section in the Uniform Probate Code as promulgated by the National Conference of Commissioners is designated as section 6-201.

Editorial Board Comment

This section authorizes a variety of contractual arrangements which have in the past been treated as testamentary. For example most courts treat as testamentary a provision in a promissory note that if the payee dies before payment is made the note shall be paid to another named person, or a provision in a land contract that if the seller dies before payment is completed the balance shall be canceled and the property shall belong to the vendee. These provisions often occur in family arrangements. The result of holding the provisions testamentary is usually to invalidate them because not executed in accordance with the statute of wills. On the other hand the same courts have for years upheld beneficiary designations in life insurance contracts. Similar kinds of problems are arising in regard to beneficiary designations in pension funds and under annuity contracts. The analogy of the power of appointment provides some historical base for solving some of these problems aside from a validating statute. However, there appear to be no policy reasons for continuing to treat these varied arrangements as testamentary. The revocable living trust and the multiple-party bank accounts, as well as the experience with United States government bonds payable on death to named beneficiaries, have demonstrated that the evils envisioned if the statute of wills is not rigidly enforced simply do not materialize. The fact that these provisions often are part of a business transaction and in any event are evidenced by a writing to eliminate the danger of "fraud."

Because the types of provisions described in the statute are characterized as nontestamentary, the instrument does not have to be executed in compliance with section [91A-2-502]; nor does it have to be probated, nor does the personal representative have any power or duty with respect to the assets involved.

The sole purpose of this section is to eliminate the testamentary characterization from the arrangements falling within the terms of the section. It does not invalidate other arrangements by negative implication. Thus it is not intended by this section to embrace oral trusts to hold property at death for named persons; such arrangements are already generally enforceable under trust law.

91A-6-102. Effective date. (1) This code takes effect on July 1, 1975.

(2) Except as provided elsewhere in this code, on the effective date of this code:

(a) the code applies to any wills of decedents dying thereafter;

(b) the code applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code;

(c) every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this code and is subject to the duties imposed with respect to any act occurring or done thereafter;

(d) an act done before the effective date in any proceeding and any accrued right is not impaired by this code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right;

(e) any rule of construction or presumption provided in this code applies to instruments executed and multiple-party accounts opened before the effective date unless there is a clear indication of a contrary intent.

History: En. 91A-6-102 by Sec. 3, Ch. 365, L. 1974.

Construction of Will

Where will took effect prior to adoption of the Uniform Probate Code, the provisions of prior law govern the construction of the will. Matter of Estate of Gudmunsen, — M —, 545 P 2d 146; Matter of Estate of Donovan, — M —, 546 P 2d 512.

91A-6-103. Repealed.

Repeal

Section 91A-6-103 (Sec. 17, Ch. 365, L. 1974), defining "administrator," "administrator with the will annexed," and "executor," was repealed by Sec. 10, Ch. 516, Laws 1975.

91A-6-104. Uniform Probate Code takes precedence. Should any provision of this act conflict with any provisions of other statutes of the state of Montana relating to probate, guardianship, or other subjects incorporated in this act, and such other statute or statutes was or were adopted prior to the enactment of this act, the provisions of this act shall be deemed to be controlling.

History: En. 91A-6-104 by Sec. 19, Ch. 365, L. 1974.

Separability Clause.

Section 20 of Ch. 365, Laws 1974 read: "If any provision of this act or the application thereof to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable."

Repealing Clause

Section 2 of Ch. 365, Laws 1974 read: "Sections 22-101 through 22-117, 91-101, 91-102, 91-107, 91-108, 91-113 through 91-116, 91-122, 91-125 through 91-130, 91-135 through 91-139, 91-141, 91-201, 91-210, 91-214 through 91-217, 91-227, 91-235, 91-301, 91-303, 91-304, 91-307, 91-308, 91-311 through 91-314, 91-317, 91-319, 91-321, 91-402 through 91-405, 91-411 through 91-418, 91-423 through 91-430, 91-520 through 91-522, 91-612A, 91-612B, 91-701, 91-702, 91-801 through 91-811, 91-901, 91-904, 91-1001 through 91-1003, 91-1101 through 91-1105, 91-1107, 91-1301 through 91-1303, 91-1305 through 91-1312, 91-1401, 91-1402, 91-1404 through 91-1406, 91-1501 through 91-1509, 91-1601 through 91-1604, 91-1701 through 91-1723, 91-1801 through 91-1807, 91-1901 through 91-1906, 91-2002 through 91-2004, 91-2101 through 91-2105, 91-2201 through 91-2204, 91-2207 through 91-2213, 91-2401 through 91-2407, 91-2501 through 91-2507, 91-2601 through 91-2612, 91-2701 through 91-2705, 91-2707 through 91-2712, 91-2715 through 91-2720, 91-2723, 91-2724, 91-2801 through 91-2810, 91-2901, 91-2902, 91-3001 through 91-3039, 91-3101 through 91-3109, 91-3201 through 91-3204, 91-3209 through 91-3212, 91-3301 through 91-3313, 91-3405, 91-3407, 91-3601 through 91-3608, 91-3701 through 91-3706, 91-3801 through 91-3803, 91-3901 through 91-3907, 91-4001 through 91-4012, 91-4101 through 91-4106, 91-4311, 91-4314 through 91-4316, 91-4321, 91-4322, 91-4501 through 91-4508, 91-4510 through 91-4518, 91-4522 through 91-4525, 91-4601 through 91-4604, 91-4606 through 91-4608, 91-4610, 91-4611, 91-4701 through 91-4706, 91-4801 through 91-4822, 91-4901 through 91-4904, 91-4906, 91-4907, 91-4909 through 91-4911, 91-5001 through 91-5007, 91-5101 through 91-5111, 91-5202, 91-5203, 91-5210, 91-5301 through 91-5312, and 93-1404.4, R. C. M. 1947, are repealed."

TOPICAL INDEX
FOR
THE UNIFORM PROBATE CODE

Adapted from the Index prepared by the Joint Editorial Board for the Uniform Probate Code under the sponsorship of the National Conference of Commissioners on Uniform State Laws

---

A

ABATEMENT
Exempt property, 91A-2-402
Omitted spouse, share satisfied by, 91A-2-301
Pretermitted child, share satisfied by, 91A-2-302
Statutory order of, 91A-3-902
Testator's intent controls, 91A-3-902

ABATEMENT OF ACTIONS
See ACTIONS, SPECIFIC, Pending at death

ABSENCE AND ABSENTEES
Death presumed, 91A-1-107(3)
Disposition of unclaimed assets, 91A-3-914
Proof, 91A-1-107
Protection of absentee's property, 91A-5-401—See CONSERVATOR AND CONSERVATORSHIP; PROTECTIVE PROCEEDINGS
Uniform Absence as Evidence of Death and Absentee's Property Act, comment, 91A-1-107

ACCOUNTING, DUTIES OF
Conservator, power to deposit funds, 91A-5-419
Final accounting to close estate, 91A-3-1012
Guardian of incapacitated person, 91A-5-312(1)(e)(f)
Guardian of minor, 91A-5-209(4)
Supervised administrator, 91A-3-504, 91A-3-505

ACCOUNTS, BANK
Conservator, power to deposit funds, 91A-5-424(3)(f)
Nontestamentary provisions, deposit agreements, 91A-6-101
Personal representative, power to deposit funds, 91A-3-713(5)

ACTIONS, SPECIFIC
Against distributees, 91A-3-1005, 91A-3-1007
Against fiduciaries
  concurrent jurisdiction
    conservator, 91A-5-402(3), 91A-5-429(3)
    personal representative, 91A-3-105, 91A-3-808(3)
  limitations, personal representatives, 91A-3-1006
By fiduciaries
  conservators, authority, 91A-5-424(3)(x)
  personal representatives, 91A-3-105, 91A-3-708, 91A-3-713(22)
Estate tax apportionment, 91A-3-916(7), (8)
Pending at death
  necessity of administration, 91A-3-104
  presentation of claim not required, 91A-3-804(2)
Recovery of estate property
  augmented estate portions, 91A-2-205(5)
  estate assets, 91A-3-708
  small estates, 91A-3-1202

ADEMPTION BY SATISFACTION
Devises, requirements, 91A-2-612
Nonademption of specific devises, 91A-2-607, 91A-2-608

ADMINISTRATION, DECEDENTS' ESTATES
Administrators—See ADMINISTRATORS; PERSONAL REPRESENTATIVE
Ancillary administration—See ANCILLARY ADMINISTRATION
Claims, necessity of administration, 91A-3-104—See CLAIMS
Closing estates—See CLOSING ESTATES
Commencement, by issuance of letters, 91A-3-103
Court, jurisdiction
  of subject matter, 91A-3-105
  over persons, 91A-3-106
Executor—See EXECUTORS; PERSONAL REPRESENTATIVE
Flexible system of, Uniform Probate Code, explained, Comment, pp. 47, 48
Letters—See LETTERS
Limitations—See LIMITATIONS
Personal representative—See PERSONAL REPRESENTATIVE
Priority to administer, order, 91A-3-203
Probate necessary, exception, 91A-3-102—See FORMAL TESTACY PROCEEDINGS; INFORMAL PROBATE PROCEEDINGS; PROBATE OF WILLS
Proceedings—See PROCEEDINGS
Reopening administration, 91A-3-1009
Succession without administration
  devolution, intestate and testate, 91A-3-101
  title, rights of successors, 91A-3-901
  transfer of small estates by affidavit, 91A-3-1201, 91A-3-1202
Summary administrative procedure, small estates, 91A-3-1203
Supervised administration—See SUPERVISED ADMINISTRATION
Termination—See CLOSING ESTATES
Venue, 91A-3-201, 91A-3-202

ADMINISTRATION, NONRESIDENTS' ESTATES
See ANCILLARY ADMINISTRATION

ADMINISTRATION, PROTECTED PERSONS' ESTATES
By court—See PROTECTIVE PROCEEDINGS
Conservator—See CONVERVATOR AND CONSERVATORSHIP
Guardians of incapacitated persons—See GUARDIANS OF INCAPACITATED PERSONS
Guardians of minors—See GUARDIANS OF MINORS

ADMINISTRATORS
Defined as personal representative, 91A-1-201(31)
Personal representative—See PERSONAL REPRESENTATIVE
Priority to administer, 91A-3-203
Special administrator—See SPECIAL ADMINISTRATOR
Supervised administrator—See SUPERVISED ADMINISTRATION

ADOPTION
Child, defined, 91A-1-201(3)
Pretermitted children, provision for intestate share, 91A-2-302
Relationships defined for purposes of succession
  intestate, 91A-2-109
  testate, 91A-2-611

ADVANCEMENT, 91A-2-110

AFFIDAVITS
Collection of property by
  nonresident decedent's, by foreign representative, 91A-4-204
  protected person's, by foreign conservator, 91A-5-431
  small estates, by successor, 91A-3-1201, 91A-3-1202
Power of attorney, proof of nonrevocation, 91A-5-502
Wills, proof of due execution
  formal probate, 91A-3-405, 91A-3-406
  informal probate, 91A-3-303(3)
  self-proved will, 91A-2-504

AFFIRMATION

See OATHS AND AFFIRMATIONS

AFTERBORN HEIRS

Pretermitted, provision for intestate share, 91A-2-302
Rights in intestate succession, 91A-2-108

AGE

Minority
  defined, 91A-1-201(25)
  ward, minimum age to initiate proceedings, 91A-5-203, 91A-5-206, 91A-5-212
Testator, minimum age to execute will, 91A-2-501

ALIENAGE

Heirs not disqualified by, exception, 91A-2-111
  duties of personal representative upon disqualification, 91A-2-111.1

ALLEGED DECEDENT

See PRESUMED DECEDENT, PROVISION FOR

ALLOWANCES

See also EXEMPT PROPERTY AND ALLOWANCES

Estate taxes, 91A-3-916(5)
Family allowance, 91A-2-403
Homestead allowance, 91A-2-401

ANCILLARY ADMINISTRATION

Definitions
  foreign personal representative, 91A-1-201(15)
  local administration, 91A-4-101(1)
  local personal representative, 91A-4-101(2)
  nonresident decedent, 91A-1-201(27)
  resident creditor, 91A-4-101(3)
Domicile, conflicting claims, determination, 91A-3-202
Foreign personal representative—See FOREIGN PERSONAL REPRESENTATIVE
Judgments binding on all representatives, 91A-4-401
Jurisdiction, local, over foreign representatives
  by acceptance of local letters, 91A-3-602
  by act of decedent, 91A-4-302
  by act of representative, 91A-4-301
  service, method and time, 91A-4-303
Local administration, nonresident decedents' estates
  claims
    barred at domicile, barred locally, 91A-3-803(1)
    duty of representative in multiple administration, 91A-3-815
  effect on powers of foreign representative, 91A-4-208
  final distribution to domiciliary personal representative, 91A-3-816
  local appointment
    delay of, exceptions, 91A-3-307(1)
    priority of forign domiciliary representative for, 91A-3-203(7)
    removal of local appointee by foreign representative, 91A-3-611(2)
    restriction on appointment, 91A-3-308(2)
    transition of powers, foreign to local, 91A-4-208
Protection of third persons if no local administration
  discharge of local debtors, 91A-4-205
  resident creditor rights, court order, 91A-4-206
Provisions governing administration, 91A-4-209

ANNUITY

Credited against elective share, 91A-2-202(3)
Excluded from augmented estate, 91A-2-202(2)
Protected person's
  exercise of options, by court, 91A-5-408(3)
  purchase, by court, 91A-5-409

ANNULMENT
See DIVORCE AND ANNULMENT

ANTI-LAPSE, 91A-2-605

APPEALS
Rules governing, 91A-1-308
Testacy orders subject to, 91A-3-412

APPLICATIONS
Defined, 91A-1-201(1)
Informal appointment, 91A-3-301
Informal probate, 91A-3-301

APPOINTMENT AND APPOINTMENT PROCEEDINGS
Administrators and executors—See FORMAL APPOINTMENT PROCEEDINGS; INFORMAL APPOINTMENT PROCEEDINGS; PERSONAL REPRESENTATIVE
Conservator—See CONSERVATOR AND CONSERVATORSHIP
Guardian ad litem—See GUARDIAN AD LITEM
Guardians—See GUARDIANS
Letters of appointment, 91A-1-305—See LETTERS
Power of appointment—See POWER OF APPOINTMENT
Proceedings—See PROCEEDINGS

APPRAISEMENT AND APPRAISERS
See also INVENTORY
Duty of personal representative, 91A-3-706
Review of employment and fees, 91A-3-722

ATTESTATION
In execution of wills, 91A-2-502, 91A-2-504
Proof for probate
formal, 91A-3-405, 91A-3-406
informal, 91A-3-303(3)

ATTORNEYS
Fees—See FEES

AUGMENTED ESTATE
See ELECTIVE SHARE
Defined, 91A-2-202

B

BENEFICIARY
Defined as relating to trust beneficiaries, 91A-1-201(2)
General power holder, deemed to act for, 91A-1-108
Insurance—See INSURANCE
Renunciation of succession by, 91A-2-801

BEQUESTS
See WILLS

BINDING OF PARTIES
By compromise agreements, 91A-3-1101
By court order, 91A-1-403

BOND
Conservator, 91A-5-411, 91A-5-416—See CONSERVATOR AND CONSERVATORSHIP
Personal representative, 91A-3-603 to 91A-3-606—See PERSONAL REPRESENTATIVE

BONDS
Nontestamentary provisions, paid or transferred at death, 91A-6-101

BURIAL
Authority to carry out arrangements, 91A-3-701
Expenses, priority as claim, 91A-3-805

C

CASUALTY INSURANCE
See INSURANCE

CAUSE OF ACTION
Against distributees, limitations, 91A-3-1005, 91A-3-1007
Decedents, tolling of limitations, 91A-3-109
Nonclaim, 91A-3-803
Suspension of statutes of limitation, 91A-3-802

CERTIFIED COPIES
Issuance by clerk of court, 91A-1-305
Proof
foreign personal representative, 91A-4-201
foreign wills, 91A-3-303(4), (5), 91A-3-408, 91A-3-409
Records—See RECORDS

CHARITABLE GIFTS AND PLEDGES
Conservator's power to make, 91A-5-425(2)
Court, powers in conservatorship, 91A-5-408(3), (4)
Personal representative's power to satisfy, 91A-3-713(4)

CHATTELS
Bequests of, by separate list, 91A-2-513
Collection by affidavit
nonresident decedent's, 91A-4-204
small estates, 91A-3-1201, 91A-3-1202
Exempt property and allowances—See EXEMPT PROPERTY AND ALLOWANCES

CHILD
Adopted, rights, 91A-2-109
Afterborn, rights, 91A-2-108
Defined, 91A-1-201(3)
for intestate succession, 91A-2-109
for testate succession, 91A-2-611
Illegitimate, rights, 91A-2-109
Pretermitted, rights, 91A-2-302
Rights, to exempt property and allowances, 91A-2-401 to 91A-2-405
Unborn, rights, 91A-2-109

CHOICE OF LAW BY TESTATOR
As to meaning, effective of will, 91A-2-602
As to place of administration, 91A-3-307(1)
As to validity of will, 91A-2-506

CIVIL PROCEDURE
Rules governing formal proceedings, 91A-1-304—See RULES OF CIVIL PROCEDURE

CLAIMS AGAINST CONSERVATORS
See CLAIMS AGAINST PROTECTED PERSON'S ESTATE

CLAIMS AGAINST DECEDENTS' ESTATES
Administration
necessary for enforcement, 91A-3-104
personal representative's duties, if multiple, 91A-3-815
Advertisement, 91A-3-801
Allowance
by court, after petition or proceedings, 91A-3-806(3), (4)
by personal representative, 91A-3-806(1)
notice, 91A-3-806(1), (2)
Classification, 91A-3-805

CLAIMS AGAINST DECEDENTS' ESTATES (Continued)
Compromise, 91A-3-813
Counterclaims, 91A-3-811
Definition, 91A-1-201(4)
Disallowance, 91A-3-806(1)
Execution prohibited, 91A-3-812
Exempt property, priority as claim, 91A-2-402
Family allowance, priority as claim, 91A-2-403
Homestead allowance, priority as claim, 91A-2-401
Interest, allowed claims, rate and commencement, 91A-3-806(4)
Jurisdiction, 91A-3-105
  judgment of another court, conclusive, 91A-3-806(3), 91A-3-815
Levies prohibited, 91A-3-812
Nonclaim, 91A-3-803
Notice
  of disallowance, 91A-3-806(1)
  of proceedings for payment, 91A-3-806(2)
  small estates excepted, 91A-3-1203
  to creditors, 91A-3-801
Payment
  claimant, rights, 91A-3-807
  claims not due, 91A-3-810
  contingent claims, 91A-3-810
  court-ordered, after petition or motion, 91A-3-807
  insufficient assets, order of payment
    priority, 91A-3-805
    proportional, in multiple administrations, 91A-3-815
  personal representative, duties, 91A-3-807, 91A-3-815
  secured claims, 91A-3-809
  time of, 91A-3-807(1)
  unsecured claims, 91A-3-810
Petition
  allowance, 91A-3-806(1), (2)
  payment of claim, 91A-3-807
Presentation
  method
    pending action, no requirement, 91A-3-804(2)
    proceedings against personal representative, 91A-3-804(2)
    written statement of claim, 91A-3-804(1)
  time, 91A-3-802, 91A-3-803
    time extensions, 91A-3-804(3)
Proceedings
  between estate and personal representative, 91A-3-808(4)
  by claimant injured by payment, 91A-3-807(2)
  counterclaim deducted, 91A-3-811
  limitations, 91A-3-1006
  nonclaim suspended, 91A-3-803(3)
  payment, 91A-3-804(2), (3), 91A-3-806, 91A-3-807
    contingent or unliquidated claims, payment arranged, 91A-3-810
    judgments of other jurisdictions recognized, 91A-3-806(3), 91A-3-815
Secured claims
  decedent's liability insurance, 91A-3-803(3)
  execution and levies permitted, 91A-3-812
  nonclaim ineffective against encumbrances, 91A-3-803(3)
  payment, nonexoneration, 91A-3-814
Statutes of limitation, 91A-3-802
Unpaid claims, liabilities
  of distributees, 91A-3-1005
    limitations, proceedings against, 91A-3-1007
  of personal representatives
    individual, 91A-3-807(2), 91A-3-808
    in fiduciary capacity, 91A-3-808
    limitations, proceedings against, 91A-3-1006
    nonclaim, suspended as to liability proceedings, 91A-3-803(3)

CLAIMS AGAINST PROTECTED PERSON'S ESTATE
Allowance
by conservator, 91A-5-428(1)
by court, after proceedings, 91A-5-428(2)
Liability of conservator, 91A-5-429
Payment
conservator's duty, 91A-5-428(1)
priority for, 91A-5-428(3)
Presentation
method, 91A-5-428(1)
statute of limitation tolled by, 91A-5-428(1)

CLASS GIFTS
Anti-lapse, 91A-2-605
Generic terms defined for, 91A-2-611

CLERK OF COURT
Defined, 91A-1-201(5)
Powers and duties
documents filed with, 91A-1-305
applications, informal probate, appointment, 91A-3-301
bond, 91A-3-604
demands for bond, notice, 91A-3-605, 91A-5-406
informal appointment
applications, accepted or declined, 91A-3-301, 91A-3-309, 91A-3-311
determination, proof and findings, 91A-3-308
order of appointment, 91A-3-307
informal probate
applications, accepted or declined, 91A-3-301, 91A-3-304, 91A-3-305
determination, proof and findings, 91A-3-303
statement of informal probate, 91A-3-302

CLOSING ESTATES
Closing
alternative procedures for
judicial, 91A-3-1001, 91A-3-1002
nonjudicial, 91A-3-1003
defined, comment, 91A-3-1003
final accounting to close, 91A-3-1012
two years, requirement for closing within, 91A-3-1011
Closing statement by personal representative
contents, 91A-3-1003(1)
effect, comment, 91A-3-1003
filing, time, 91A-3-1003(1)
fraudulent statement, remedy, 91A-1-106
small estates, 91A-3-1204
Proceedings
claims after closing
against distributees, liability and limitations, 91A-3-1005, 91A-3-1007
against personal representatives, limitations, 91A-3-1006
reopening estates, 91A-3-1009
Taxes, department of revenue certificate prerequisite, 91A-3-1004
Termination of appointment, personal representative
certificate discharging liens securing performance, 91A-3-1008
defined, 91A-3-608
comment, 91A-3-1003
effect on authority, liability, 91A-3-608
protection offered by, comment, 91A-3-1003
time effective
after closing statement, one year, 91A-3-1003(2)
upon order closing estate, 91A-3-1001, 91A-3-1002
Termination of conservatorship
upon death of protected person, 91A-5-425(5)
upon termination of minority or disability, 91A-5-430
Termination of guardianship
incapacitated persons, 91A-5-306, 91A-5-313
minors, 91A-5-210, 91A-5-212

CODICIL
Defined as will, 91A-1-201(48)—See WILLS
Informal probate of, 91A-3-304

COMMON FORM PROBATE
See INFORMAL PROBATE PROCEEDINGS
Comment, 91A-3-302

COMPENSATION AND EXPENSES
Agents, employed by decedent's estate, 91A-3-713(21)
Attorneys
in decedents' estates, 91A-3-713(21), 91A-3-720 to 91A-3-722
in protected persons' estates, 91A-5-414
Conservator, 91A-5-414
Guardians
of incapacitated persons, 91A-5-312(2)
of minors, 91A-5-103, 91A-5-209(2)
Personal representative
amount of fee, 91A-3-719
expenses in litigation, right to, 91A-3-721
renunciation of fee, 91A-3-719
review of fees, proceeding, 91A-3-722
Physician, in protective proceedings, 91A-5-414
Review of employment, fees, 91A-3-722
Visitor, in protective proceedings, 91A-5-414

COMPROMISE OF ESTATE CONTROVERSIES
Court approval, proceeding
agreement, execution requirements, 91A-3-1102(1)
execution, by fiduciary, 91A-3-1102(2), (3)
initiation by interested person, 91A-3-1102(2)
order, after notice and findings, 91A-3-1102(3)
parties bound, 91A-3-1101
representation of parties, 91A-1-403, 91A-3-1102
rights of third parties, 91A-3-1101
subject of agreements, 91A-3-1101
comment, 91A-3-1102
Private agreements among successors, 91A-3-912

CONFLICTING STATUTES
Uniform Probate Code takes precedence, 91A-6-104

CONFLICT OF INTEREST
By conservator, 91A-5-422
By guardian ad litem, 91A-1-403(4)
By personal representative, 91A-3-711
cause for appointment of special administrator, 91A-3-614
Virtual representation, 91A-1-403

CONSENT TO NOTICE
Conservator, 91A-5-413
Foreign personal representative, 91A-4-302
Guardian
of incapacitated person, 91A-5-305
of minor, 91A-5-208
Personal representative, 91A-3-602

CONSERVATOR AND CONSERVATORSHIP
See also PROTECTIVE PROCEEDINGS
Alternatives to full conservatorship
protective arrangements, by court, 91A-5-409(1)
single transactions, by court, 91A-5-409(2)
special conservator, 91A-5-409(3)
Appointment
acceptance, consent to jurisdiction by, 91A-5-413

CONSERVATOR AND CONSERVATORSHIP (Continued)
Appointment (Continued)
cause for, 91A-5-401
eligibility for, 91A-5-410
priority for, 91A-5-410
proceeding for, 91A-5-404 to 91A-5-407
right of nomination, 91A-5-410
title as trustee by, 91A-5-420, 91A-5-421
Bond
amount, 91A-5-411
recovery, 91A-5-412
required
by court, 91A-5-411
demand by interested person, 91A-5-416
securities, accepted in lieu of sureties, 91A-5-411
sureties, liabilities, limitations, 91A-5-412
terms and requirements of, 91A-5-412
Claims against protected person
allowance
by conservator, 91A-5-428(1)
by court order, 91A-5-428(2)
assertion against conservator, 91A-5-429(3)
court, concurrent jurisdiction over, 91A-5-402(3)
payment, priority, 91A-5-428(3)
powers of conservator re claims, 91A-5-424(3) (s), (x)
Compensation and expenses, 91A-5-414
Conflict of interest, 91A-5-422
Court, relation of conservator to
consent to jurisdiction, 91A-5-413
independence from as trustee, 91A-5-420
initiation of proceedings
petition for instructions, 91A-5-416
petition for termination, 91A-5-430
notice of proceedings to conservator, 91A-5-413
powers of court exercised through conservator, 91A-5-408—See also PROTECTIVE PROCEEDINGS, Powers of court
proceedings, orders affecting conservator
accounts, 91A-5-416, 91A-5-419
appointment, 91A-5-407, 91A-5-416(1)
bond, 91A-5-411, 91A-5-412, 91A-5-416(1)
distribution directed, 91A-5-416(1)
instructions as to fiduciary duty, 91A-5-416(2)
removal, 91A-5-416(1)
special conservator, 91A-5-409(3)
termination of conservatorship, 91A-5-430
Death
of conservator, effect, 91A-5-415
of protected person
duties of conservator, 91A-5-425(5)
procedure, acquisition of powers of personal representative, 91A-5-425(5)
Definitions
conservator, 91A-1-201(7)
protected person, 91A-5-101, 91A-5-401
protective proceeding, 91A-5-101, 91A-5-401
Disability, defined as cause for protection, 91A-5-401
Foreign conservator
power to collect assets without local proceeding, 91A-5-431
priority for local appointment, 91A-5-410(1)
Letters of conservatorship
powers as personal representative, endorsed on, 91A-5-425(5)
recording of, as evidence of transfer, 91A-5-421
restrictions endorsed on, 91A-5-426
Liability
accounts, 91A-5-419, 91A-5-429(4)
claims, 91A-5-429

CONSERVATOR AND CONSERVATORSHIP (Continued)
Liability (Continued)
determination of, 91A-5-429
fiduciary, 91A-5-429
individual, 91A-5-429
Minority, as cause for protection, 91A-5-401
Persons dealing with conservator, protection
afforded by fiduciary duty as trustee, 91A-5-417
afforded by title held, 91A-5-420
against improper exercise of power, 91A-5-423
Powers and duties
accounts, 91A-5-419
administrative powers
independent actions authorized, 91A-5-424(3)
parental powers and duties as guardian, conditions, 91A-5-424(1)
statutory powers as trustee, 91A-5-424(1), (2)
bond, 91A-5-411, 91A-5-412
court orders executed through conservator, 91A-5-408
distributive powers
authority to act independently, 91A-5-425(1)
expenditures authorized during trust continuance, 91A-5-425(1), (2)
on termination, duty to pay over, distribute, 91A-5-425(3), (4), (5)
enlargement or limitation of powers, 91A-5-426
estate plan, duty to preserve, 91A-5-427
fiduciary duty, general, 91A-5-417
inventory and records, 91A-5-418
personal representative, power as, 91A-5-425(5)
will of protected person
authority to examine, 91A-2-901
duty upon death, 91A-5-425(5)
Protected person
capacity unaffected by conservatorship, 91A-5-408(5)
cause for protection, 91A-5-401
Removal of conservator, 91A-5-415
Resignation, 91A-5-415
Special conservator, appointment, authority, 91A-5-409(3)
Successor conservator, appointment, powers, 91A-5-415
Termination of conservatorship
cause, end minority or disbility, 91A-5-430
proceeding, 91A-5-430
title transferred by, 91A-5-430
Title, as between conservator and protected person, 91A-5-420, 91A-5-421, 91A-5-430

CONTRACTS
Altering distribution, 91A-3-912
Compromise of controversies, 91A-3-1101, 91A-3-1102
Conservator's power to make, 91A-5-424
Court's power to enter or ratify for protected person, 91A-5-409
Employment contracts
benefits for spouse in elective share, 91A-2-202
death benefits, nontestamentary, 91A-6-101
Homicide by beneficiary, effect, 91A-2-803
Liens—See ENCUMBRANCES
Marital rights, contract releasing, 91A-2-204
Mortgages—See ENCUMBRANCES
Nontestamentary provisions of, 91A-6-101
Personal representative's power to make, 91A-3-713
Renunciation of succession, loss by contract, 91A-2-801(4)
Wills, contracts to make or not revoke, 91A-2-701

CONVEYANCES
Deed of distribution, 91A-3-907
Effective at death, nontestamentary, 91A-6-101
Fraudulent conveyances, power to avoid, 91A-3-709
Personal representative, powers, 91A-3-713

CONVEYANCES (Continued)
Protected person's estate
conservator's powers, 91A-5-424
court
jurisdiction to resolve disputes, 91A-5-402
single transactions authorized, 91A-5-409

COSTS
See COMPENSATION AND EXPENSES; COSTS OF ADMINISTRATION; FEES

COSTS OF ADMINISTRATION
See also COMPENSATION AND EXPENSES
Individual liability of personal representative, 91A-3-808
Nonclaim, 91A-3-803(2)
Priority as claim, 91A-3-805

COURT
Appeals, 91A-1-304, 91A-1-308
Clerk of court—See CLERK OF COURT
Defined, 91A-1-201(6)
Judge—See JUDGE
Jurisdiction—See JURISDICTION
Records and certified copies, 91A-1-305
Rules of practice, 91A-1-304, 91A-1-308
Stature, 91A-1-302
Trial by jury—See JURY TRIAL
Venue, 91A-1-303, 91A-3-201

CREDITORS
See CLAIMS

CURTESY
See ELECTIVE SHARE
Abolished, 91A-2-112

CUSTODY
Wards, custodial rights—See GUARDIANS OF INCAPACITATED PERSONS; GUARDIANS OF MINORS
Wills, 91A-2-901, 91A-2-902

D

DEATH
Child assumed dead, omitted from will, 91A-2-302(2)
Evidence of death, rules
absence, death presumed, 91A-1-107(3)
death certificate, 91A-1-107(1)
missing persons, status, 91A-1-107(2)
Fact of death mistake re alleged decedent
finding of fact of death, 91A-3-412(5)
notice and search requirements, 91A-3-403(2)
recovery, right, 91A-3-412(5)
Simultaneous death
rules of evidence, 91A-1-107
Uniform Simultaneous Death Act, comment, 91A-2-104
Survivorship requirements
intestate, 91A-2-104
testate, 91A-2-601, 91A-2-605

DEBTS
See also COMPENSATION AND EXPENSES; COSTS OF ADMINISTRATION; FEES
Abatement of shares for payment, 91A-3-902
Conservator, 91A-5-429
Decedent—See CLAIMS

DEBTS (Continued)
Due decedent, right of retainer, 91A-3-903
Funeral expenses—See FUNERAL
Of personal representative, 91A-3-808
Place of indebtedness, venue, 91A-3-201(4)

DEED OF DISTRIBUTION
Deed as proof of distributee's title, 91A-3-907, 91A-3-908
Distributee defined, 91A-1-201(11)
Exempt property, 91A-2-404
Purchasers from distributees protected, 91A-3-910

DEFINITIONS OF TERMS
Ancillary administration, 91A-4-101
Apportionment of estate taxes, 91A-3-916
General, 91A-1-201
Persons under disability, 91A-5-101

DELEGATION OF AUTHORITY
By conservator, 91A-5-424(3) (w)
By parent or guardian, 91A-5-104
By personal representative to corepresentative, 91A-3-713(21), 91A-3-717
By power of attorney, 91A-5-501, 91A-5-502

DEPOSIT
Conservatorship, powers of court, 91A-5-409(1)
Nontestamentary provisions of contracts, 91A-6-101
Personal representative, powers, 91A-3-713(5)

DEPOSIT OF WILLS, 91A-2-901, 91A-2-902

DESCENT
Statutory estate plan—See DEVOLUTION; INTESTATE SUCCESSION

DEVISE AND DEVISEE
See also WILLS
Devise, defined, 91A-1-201(8)
Devisee, defined, 91A-1-201(9)

DEVOLUTION
Intestate and testate, general, 91A-3-101
compromise agreements, 91A-3-1101, 91A-3-1102
Intestate succession—See INTESTATE SUCCESSION
Jurisdiction, 91A-3-105, 91A-3-106
Testate succession—See WILLS

DISABILITY, PERSONS UNDER
Conservator's disability, effect, 91A-5-415
Defined, 91A-5-101
comments, 91A-5-304, 91A-5-401
Guardian's disability, effect
of incapacitated person, 91A-5-307, 91A-5-313
of minor, 91A-5-210, 91A-5-212
Incapacitated persons—See INCAPACITATED PERSONS
Jurisdiction, protective and guardianship proceedings, 91A-5-102
Minors—See MINORS
Personal representative's disability, effect, 91A-3-609
Powers of attorney affected by disability, 91A-5-501, 91A-5-502
Protection of persons
guardians of incapacitated persons—See GUARDIANS OF INCAPACITATED PERSONS
guardians of minors—See GUARDIANS OF MINORS
Protection of property
conservators—See CONSERVATOR AND CONSERVATORSHIP
protective proceedings—See PROTECTIVE PROCEEDINGS
Representation, rights, 91A-1-403

DISINHERITANCE, FAMILY PROTECTION AGAINST
Elective share—See ELECTIVE SHARE
Exempt property, 91A-2-402
Family allowance, 91A-2-403
Homestead allowance, 91A-2-401
Spouse, children omitted in will, share, 91A-2-301, 91A-2-302

DISPOSITION OF UNCLAIMED PROPERTY, 91A-3-914

DISTRIBUTION, DECEDENTS' ESTATES
Aliens, 91A-2-111
Appropriation of shares for payment of debts, abatement, order, 91A-3-902
Closing estates—See CLOSING ESTATES
Contracts to alter, 91A-3-912
Court
- jurisdiction of disputes, 91A-3-105
- orders directing distribution
  - formal settlements, 91A-3-1001, 91A-3-1002
  - supervised administration, 91A-3-505

Deed of distribution—See DEED OF DISTRIBUTION
Distributee
- defined, 91A-1-201(11)
- evidence of right or title, 91A-3-908
- testamentary trustee as, 91A-1-201(11)
  - comment, 91A-3-913

Estate tax apportionment, 91A-3-916
Foreign representative, 91A-3-816
Improper distribution
- liability of distributees
  - ceiling, right of contribution, 91A-3-1005
  - limitations, proceedings against, 91A-3-1007
- liability of personal representative, 91A-3-703
  - comment, 91A-3-909
- purchasers protected, 91A-3-910

In kind
- proof of title, 91A-3-907, 91A-3-908
- proposal for distribution in kind, 91A-3-906(2)
- valuation of assets, 91A-3-906(1)

Missing persons
- disposition of unclaimed property, 91A-3-914(1)
- recovery, rights, 91A-3-914(2)

Partition, proceeding, 91A-3-911

Personal representative, powers and duties
- authority, source, 91A-3-703, 91A-3-704, 91A-3-713(26)
- duty, liability to interested persons, 91A-3-703
- restrained from distribution, 91A-3-607
- restricted, in supervised administration, 91A-3-503, 91A-3-504, 91A-3-505
- successors' agreements binding, 91A-3-912

Persons under disability, authorized distribution, 91A-3-915
Possession pending distribution, 91A-3-708
Right of retainer, 91A-3-903
Small estates, summary distribution, 91A-3-1203
Testamentary trustee, 91A-3-913
Title—See TITLE

DISTRIBUTION, PROTECTED PERSON'S ESTATE, 91A-5-425

DIVORCE AND ANNULMENT
Effect on succession as spouse, 91A-2-802
Waiver of marital rights, 91A-2-204
Will revoked by, 91A-2-508

DOCUMENTS
See FILED DOCUMENTS; RECORDS

DOWER
See also ELECTIVE SHARE
Abolished, 91A-2-112

E

EFFECTIVE DATE
Uniform Probate Code, 91A-6-102

ELECTIVE SHARE
Amount, 91A-2-201
Augmented estate defined, 91A-2-202
Benefits affected by election
exempt property and allowances, 91A-2-206
renunciation of benefits, 91A-2-204
will benefits, 91A-2-206
Curtesy abolished, 91A-2-112
Domicile of decedent governs right, 91A-2-201
Dower abolished, 91A-2-112
Liability for share
apportionment, equitable, 91A-2-207(2)
limitation of, 91A-2-207(3)
order for, 91A-2-205
Nonresident's right of election, 91A-2-201
Payment, method
charges to spouse, 91A-2-205(4), 91A-2-207(1)
contribution, 91A-2-207(2), (3)
Petition for
filing in court, 91A-2-205(1)
mail or delivery to personal representative, 91A-2-205(1)
withdrawn, 91A-2-205(3)
Proceeding
commencement, 91A-2-205(1)
notice, 91A-2-205(2)
order for elective share, 91A-2-205(4)
Protected person's right of election, 91A-2-203, 91A-5-408(3)
Recovery of share, 91A-2-205(4), (5)
Spouse's right of election, 91A-2-201, 91A-2-203
Waiver of right, 91A-2-204

ENCUMBRANCES, DECEDENTS' ESTATES
See also ENCUMBRANCES, PROTECTED PERSONS' ESTATES
Bond
certificate discharging liens securing performance, 91A-3-1008
secured by liens, 91A-3-604
Claims not due, contingent or unliquidated, secured by, 91A-3-810
Conflict of interest involving, effect, 91A-3-711
Contracts canceled at death, 91A-6-101
Court jurisdiction to resolve disputed liens against estate, 91A-3-105
Excepted from nonclaim, 91A-3-803(3)
Exempt property, encumbered chattels, 91A-2-402
Exoneration, construction against, 91A-2-609, 91A-3-814
Mortgages defined, 91A-1-201(26)
Personal representative
payment of encumbrances, 91A-3-814
transactions authorized, 91A-3-713(3), (4), (23)

ENCUMBRANCES, PROTECTED PERSONS' ESTATES
Conservator
bond secured by liens, 91A-5-411
conflict of interest involving encumbrances, 91A-5-422
powers, 91A-5-424
Court
jurisdiction to resolve disputes, 91A-5-402
single transactions authorized, 91A-5-409

ESCHEAT, 91A-2-104, 91A-2-105

ESTATE PLAN
Intestate, statutory, 91A-2-101 to 91A-2-112—See INTESTATE SUCCESSION
Protected person's, preserved, 91A-5-427
Testate—See WILLS
Will substitutes—See WILL SUBSTITUTES

ESTATES
Administration of
decedents—See ADMINISTRATION; PERSONAL REPRESENTATIVE
protected persons—See CONSERVATOR AND CONSERVATORSHIP; PROTECTIVE PROCEEDINGS
Augmented, 91A-2-202—See ELECTIVE SHARE
Closing estates—See CLOSING ESTATES
Court, general jurisdiction, 91A-1-302
Defined, 91A-1-201(12)
for elective share purposes, 91A-2-202
for estate tax purposes, 91A-3-916
Devolution—See DEVOLUTION
Distribution
decedents' estates—See DISTRIBUTION, DECEDENTS' ESTATES
protected persons' estates, 91A-5-425
Intestate estates—See INTESTATE SUCCESSION
Proceedings—See PROCEEDINGS
Small estates—See SMALL ESTATES
Testate estates—See WILLS

ESTATE TAXES
See also TAXES
Allowances, for deductions, exemptions, credits, 91A-3-916(5)
Apportionment, method
court determinations, 91A-3-916(3)
statutory, 91A-3-916(2)
will directive controls, 91A-3-916(2)
Court, jurisdiction, venue, 91A-3-916(8)
Definitions, 91A-3-916(1)
Excluded from definition of claim, 91A-1-201(4)
Liability for
distributees, 91A-3-916(4), (6)
personal representative, 91A-3-916(3), (7)
Payment, duty of personal representative, 91A-3-708, 91A-3-713(18)
Recovery
authority, 91A-3-916(4)
tax payable to another state, 91A-3-916(8)
time, 91A-3-916(7)
Temporary interest, method of taxation, 91A-3-916(6)
Withholding, authority, 91A-3-916(4)

EVIDENCE
Of authority—See LETTERS
Of death or status, 91A-1-107
Of intent to exercise power of appointment in will, 91A-2-610
Of intent to omit spouse, child from will, 91A-2-302
Of title—See DEED OF DISTRIBUTION; TITLE
Of valid power of attorney, 91A-5-502
Of wills, due execution—See PROBATE OF WILLS; WILLS

EXECUTOR
See PERSONAL REPRESENTATIVE
Authority prior to appointment, 91A-3-701
Defined as personal representative, 91A-1-201(31)
Priority for appointment
executors, 91A-3-203
special administrator, 91A-3-615

EXEMPT PROPERTY AND ALLOWANCES
Application limited to domicile
exempt property, 91A-2-402
family allowance, 91A-2-403
homestead allowance, 91A-2-401
Children, rights
exempt property, 91A-2-402
family allowance, 91A-2-403
homestead, 91A-2-401
Claims, priority over
exempt property, 91A-2-402
family allowance, 91A-2-403
homestead allowance, 91A-2-401
Determination
exempt property, 91A-2-402
family allowance, 91A-2-403
homestead allowance, 91A-2-401
Devises in lieu of
exempt property, 91A-2-402
family allowance, 91A-2-403
homestead alowance, 91A-2-401
Distribution in kind, 91A-2-404
valuation for, 91A-3-906
Elective share, effect, 91A-2-206
Exempt property, 91A-2-402
Family allowance, 91A-2-403
Homestead allowance, 91A-2-401
Payment, source
exempt property, 91A-2-402
family allowance, 91A-2-404
homestead allowance, 91A-2-404
valuation for distribution in kind, 91A-3-906
Personal representative, authority, 91A-2-404
Waiver of rights, 91A-2-204

EXONERATION
Construction against, 91A-2-609, 91A-3-814

F

FALSE SWEARING, 91A-1-309

FAMILY ALLOWANCE, 91A-2-403, 91A-2-404

FEES
See also COSTS OF ADMINISTRATION; DEBTS
Agents, employed by decedent's estate, 91A-3-713(21)
Attorneys
in decedents' estates, 91A-3-713(21), 91A-3-720 to 91A-3-722
in protected persons' estates, 91A-5-414
Conservator, 91A-5-414
Guardians
of incapacitated persons, 91A-5-312(2)
of minors, 91A-5-103, 91A-5-209(2)
Personal representative
amount of fee, 91A-3-719
expenses in litigation, right to, 91A-3-721
renunciation of fee, 91A-3-719
review of fees proceeding, 91A-3-722
Physician, in protective proceeding, 91A-5-414
Review of employment and fees, 91A-3-722
Visitor, in protective proceedings, 91A-5-414

FIDUCIARY
Conservator as, 91A-5-417
Defined, 91A-1-201(14)
for tax purposes, 91A-3-916(1)

FIDUCIARY (Continued)
Guardian as, 91A-1-201(14)
Personal representative as, 91A-1-201(14), 91A-3-703

FILED DOCUMENTS
Clerk of court, duties, 91A-1-305—See CLERK OF COURT
Fraud, 91A-1-106
Records—See RECORDS

FINANCIAL INSTITUTIONS
Accounts—See ACCOUNTS, BANK
Deposit—See DEPOSIT

FORCED SHARE
See ELECTIVE SHARE

FOREIGN PERSONAL REPRESENTATIVE
See also ANCILLARY ADMINISTRATION

Defined, 91A-1-201(15)
Jurisdiction over
by acceptance of letters, 91A-3-602
by act of decedent, 91A-4-302
by act of foreign representative, 91A-4-301
judgments binding on, 91A-4-401
service, 91A-4-303
Local administration, nonresident decedents' estates
avoiding necessity of, 91A-4-204, 91A-4-207
defined, 91A-4-101(1)
effect on foreign representative, 91A-4-208
final distribution to domiciliary representative, 91A-3-816
local appointment
delayed, in nonresident decedents' estates, 91A-3-307
denied, if foreign appointment has been made, 91A-3-308(2)
priority of foreign appointee for local appointment, 91A-3-203(7)
removal of prior appointee, 91A-3-611(2)
Powers
with local administration, 91A-3-713—See PERSONAL REPRESENTATIVE
without local administration
acquisition of powers, 91A-4-201, 91A-4-202
collection of nonresident's debts, property, 91A-4-204
inspection of estate assets for inventory, right to, 91A-4-203
powers of domiciliary foreign personal representative generally, 91A-4-207
powers as special administrator, 91A-4-207
proof required, 91A-4-201, 91A-4-204
Protection of third persons, 91A-4-205, 91A-4-206

FORMAL APPOINTMENT PROCEEDINGS, PERSONAL REPRESENTATIVES
See also PERSONAL REPRESENTATIVE

Cause for, 91A-3-203(2), (3), 91A-3-401, 91A-3-414
Commencement, 91A-3-401, 91A-3-414
Effect on informal appointment, 91A-3-401, 91A-3-414
Notice
of hearing on petition, 91A-3-414
to interested persons of proceedings, 91A-3-401, 91A-3-414
Order of appointment, 91A-3-414
termination of previous appointment, 91A-3-409, 91A-3-612
Petition, contents required, 91A-3-402
Priority for appointment, 91A-2-302
order adjudicating priority, qualifications, 91A-3-414
Special administrator, 91A-3-614(2)
Successor personal representative, 91A-3-613
Supervised administrator, 91A-3-502—See SUPERVISED ADMINISTRATION

FORMAL PROBATE PROCEEDINGS
See FORMAL TESTACY PROCEEDINGS

FORMAL TESTACY PROCEEDINGS
Appointment of personal representative—See FORMAL APPOINTMENT PROCEEDINGS, PERSONAL REPRESENTATIVES
Commencement, by petition, 91A-3-401
  effect on informal appointment, probated, 91A-3-401
Contents of petition—See Petitions, below
Contested cases, proof of will
  burden of proof, 91A-3-407
  evidence
    will not self-proved, 91A-3-406(1)
    will self-proved, 91A-3-406(2)
  objection to probate, stated in pleadings, 91A-3-404
Defined, 91A-2-201(44)
Findings required, 91A-3-409
Foreign wills, 91A-3-409
Heirs determined
  order determining, 91A-3-409, 91A-3-412(2), (4)
  petition, contents required, 91A-3-402(2)
Intestacy
  order, 91A-3-409
  partial intestacy, 91A-3-411
  petition, contents required, 91A-3-402(2)
Limitations
  proceedings, 91A-3-108
  vacation of orders, 91A-3-412
Lost wills, 91A-3-402(1)
Notice requirements
  persons given, 91A-3-204, 91A-3-403
  time, method, 91A-1-401
Objections
  to appointment, 91A-3-203
  to probate of will, 91A-3-404
Orders
  domicile determined, 91A-3-409
    conflicting claims, effect, 91A-3-202
    determined by foreign court, 91A-3-408
  final orders conclusive, 91A-3-410, 91A-3-412
    foreign court orders recognized, 91A-3-408
  formal probate
    destroyed wills, 91A-3-402(1)
    foreign wills, 91A-3-409
    later-offered will, 91A-3-410, 91A-3-412(2)
    lost wills, 91A-3-402(1)
    two or more instruments, 91A-3-410
  intestacy, determination of heirs, 91A-3-409
    partial intestacy, 91A-3-411
    redetermination of heirs after final orders, 91A-3-412(2), (4)
  vacation
    appeals, 91A-1-308
    cause, 91A-3-412(1), (2), (4), 91A-3-413
    petition, time limits, 91A-3-412(3)
    rules governing, 91A-1-304
Petitions, contents required
  intestacy, heirship, 91A-3-402(2)
  probate of wills, 91A-3-402(1)
Proof of death of alleged decedent
  finding of fact of death, 91A-3-412(5)
  notice, search provisions, 91A-3-403(2)
  petition dismissed if doubt of death, 91A-3-409
  recovery by alleged decedent, 91A-3-412(5)
Proof of execution of wills, 91A-3-405, 91A-3-406
Rules of civil procedure governing, 91A-1-304
Scope of proceeding, 91A-3-401
Uncontested cases, proof of wills
  hearings optional, 91A-3-405
  proof, affidavit or testimony, 91A-3-405

FORMAL TESTACY PROCEEDINGS (Continued)
Venue, 91A-3-201
disputed venue, 91A-3-202
multiple proceedings, 91A-1-303, 91A-3-201
transfer, 91A-1-303
Will contest, 91A-3-401, 91A-3-404—See Contested cases, above

FRAUD
General provisions, 91A-1-106
In closing statement, 91A-3-1006

FRAUDULENT TRANSFERS
Power to avoid, 91A-3-709

FUNERAL
Authority to carry out arrangements, 91A-3-701
Expenses, priority as claim, 91A-3-805

G

GENERAL POWER
See POWER OF APPOINTMENT

GIFTS
Class gifts—See CLASS GIFTS
Lifetime gifts by decedent
ademption by satisfaction, 91A-2-612
advancement, 91A-2-110
Nontestamentary provisions in, 91A-6-101

GUARDIAN AD LITEM
Binding of represented interest, 91A-1-403(2)
Cause for appointment, 91A-1-403(4)
Compromise of controversies, 91A-3-1101, 91A-3-1102
In guardianship proceedings
for incapacitated persons, 91A-5-303(2)
for minors, 91A-5-207(4), 91A-5-212(3)
In protective proceedings
for allegedly disabled person, 91A-5-407(2)
for minor, 91A-5-407(1)

GUARDIANS OF ESTATES
See CONSERVATOR AND CONSERVATORSHIP; PROTECTIVE PROCEEDINGS

GUARDIANS OF INCAPACITATED PERSONS
See also GUARDIANS OF MINORS

Appointment
acceptance
consent to jurisdiction by, 91A-5-305
filing, after notice, 91A-5-301
court appointment, 91A-5-303, 91A-5-304—See Proceedings, below
persons eligible for, 91A-5-311
priority for, 91A-5-311
temporary guardian, cause and procedure, 91A-5-310
termination of, cause
death, guardian or ward, 91A-5-306
disability of guardian, 91A-5-306
objection to testamentary appointment, 91A-5-301(4)
probate denying will appointing guardian, 91A-5-306
resignation or removal, 91A-5-307
testamentary appointment
foreign appointment recognized, 91A-5-301(3)
objection to, effect, 91A-5-301(4)
Avoiding guardianship, by delegation of authority, 91A-5-104
Compensation and expenses, 91A-5-312(2)

GUARDIANS OF INCAPACITATED PERSONS (Continued)
Delegation of authority by, 91A-5-104
Guardian defined, 91A-1-201(17)
Incapacitated person
defined, 91A-5-101
incapacity determined, 91A-5-303, 91A-5-304
rights
notice, 91A-5-301(1), (2)
objection to testamentary appointment, 91A-5-301(4)
representation, 91A-5-303, 91A-5-307
review of incapacity, restriction, 91A-5-307
trial by jury, 91A-5-303(2)
Jurisidiction
over guardian, 91A-5-305
ward bound by orders, 91A-1-403
over proceedings
initial guardianship, 91A-5-102, 91A-5-302
subsequent, 91A-5-313
Notice requirements
guardian, notice of appointment, 91A-5-301(1), (2)
proceedings, 91A-5-309
waiver by ward, 91A-5-309(2)
Physician, duties, 91A-5-303(2)
Powers and duties of guardian
accounting, 91A-5-312(1)(e)
consents, 91A-5-312(1)(c)
custody, 91A-5-312(1), (2)
delegation of authority, 91A-5-104
financial
if conservator, 91A-5-312
if no conservator, 91A-5-312(1) (d), (e)
parental powers, liability, 91A-5-312(1)
restrictions on powers, 91A-5-312(1)
Proceedings
accounting, 91A-5-312(1)(e)
appointment
dismissal of proceeding, cause, 91A-5-304
evidence, by physician and visitor, 91A-5-303(2)
hearing, notice, 91A-5-303(2)
initiation, by petition, 91A-5-303(1)
order finding incapacity, appointment, 91A-5-304
rights of alleged ward, 91A-5-303(2)
incapacity
determined initially, 91A-5-304
reviewed, 91A-5-307
terminated, 91A-5-307
removal or resignation, 91A-5-307
venue, 91A-5-302, 91A-5-313
Temporary guardian
appointment, cause, duration, powers, 91A-5-310
court, power as, 91A-5-310
Treatment of mental disorder after ward's refusal, petition of guardian, 91A-5-314
Visitor
qualifications, 91A-5-308
reports, 91A-5-303(2), 91A-5-307
Ward, defined, 91A-5-101—See Incapacitated person, above

GUARDIANS OF MINORS
See also GUARDIANS OF INCAPACITATED PERSONS
Appointment
acceptance, consent to service by, 91A-5-208
by court, 91A-5-204 to 91A-5-207—See Proceedings, below
temporary guardian, 91A-5-207
termination of
cause, 91A-5-203, 91A-5-210
liability unaffected by, 91A-5-210
removal or resignation, 91A-5-212

GUARDIANS OF MINORS (Continued)
Appointment (Continued)
testamentary appointment
effective, time, method, 91A-5-202
foreign appointment recognized, 91A-5-202
objection by minor, effect, 91A-5-203
priority over court appointment, 91A-5-204
Avoiding guardianship by delegation of authority, 91A-5-104
Conservator, powers in guardianship
as guardian, 91A-5-424(1)
financial control of guardian, 91A-5-209(2)
Delegation of authority, 91A-5-104
Guardian, general
defined, 91A-1-201(17)
status, 91A-5-201
Jurisidiction
over guardian and ward, 91A-1-403, 91A-5-208
over proceedings, 91A-1-302, 91A-5-102
appointment, 91A-5-205
proceedings after appointment, 91A-5-211
transfer, 91A-1-303
Letters of guardianship, contents, 91A-5-208
Liabilities
parental, limitations, 91A-5-209
termination, effect, 91A-5-210
Minor ward
defined, 91A-1-201(25), 91A-5-101
rights
initiation, removal proceedings, 91A-5-212
nomination of guardian, 91A-5-206
notice, 91A-5-207, 91A-5-212
objection to appointment, 91A-5-203
representation by guardian ad litem, 91A-5-207, 91A-5-212
Notice requirements, 91A-5-207, 91A-5-208, 91A-5-212
Powers and duties of guardian
accounting, 91A-5-209(4)
consents, 91A-5-209(3)
custody, parental rights of, 91A-5-209
delegation of authority, 91A-5-104
financial
duty, if conservator, 91A-5-209(2)
receipt of sums or property for ward, 91A-5-209(2), 91A-5-103
initiation of proceedings
protective, 91A-5-209(1)
support, 91A-5-209(2)
limitations on powers over estate, 91A-5-209(1)
Proceedings
accounts, 91A-5-209(4)
court appointment
conditions for, 91A-5-204
hearing, findings required, 91A-5-206, 91A-5-207(2)
notice, 91A-5-207(1)
representation, right of minor, 91A-5-207(4), 91A-5-212(3)
removal or resignation, grounds, procedure, 91A-5-212
support, 91A-5-209(2)
venue, 91A-5-205, 91A-5-211

H

HEARINGS
See PROCEEDINGS
In uncontested probate of wills, 91A-3-405
Notice requirements, general, 91A-1-401

HEIRS
Defined, 91A-1-201(18)
Determination of
judicial, 91A-3-409, 91A-3-412
statutory—See INTESTATE SUCCESSION

HOMESTEAD ALLOWANCE, 91A-2-401
See EXEMPT PROPERTY AND ALLOWANCES

HOMICIDE BY HEIR OR SUCCESSOR
Effect on benefits, 91A-2-803(1) to (4)
Evidence required, 91A-2-803(5)
Protection of third persons, 91A-2-803(6)

I

ILLEGITIMACY AND ILLEGITIMATES
Exempt property, rights, 91A-2-402
Family allowance, rights, 91A-2-403
Homestead allowance, rights, 91A-2-401
Illegitimate child, status as heir
child defined, 91A-1-201(3)
definitions of parent, child for intestate succession, 91A-2-109
inclusion in class gift, 91A-2-611
issue defined, 91A-1-201(22)
parent defined, 91A-1-201(29)

INCAPACITATED PERSONS
Defined, 91A-5-101
distinguished from disability, comments, 91A-5-304, 91A-5-401
Incapacity
determined, 91A-5-303, 91A-5-304
reviewed, 91A-5-307
terminated, 91A-5-307
Protection of property—See CONSERVATOR AND CONSERVATORSHIP; PROTECTIVE PROCEEDINGS
Protection, personal—See GUARDIANS OF INCAPACITATED PERSONS

INFORMAL APPOINTMENT PROCEEDINGS, PERSONAL REPRESENTATIVES
See PERSONAL REPRESENTATIVE
Administrator, 91A-3-301(4)
Application to clerk, contents, 91A-3-301(1)
Declination of application, cause, 91A-3-308(2), 91A-3-309, 91A-3-311
Delay in order, nonresident decedents' estates, 91A-3-307(1)
Executor, 91A-3-301(3)
Formal appointment proceedings, effect, 91A-3-401
Notice requirements, 91A-3-204, 91A-3-310
Order of appointment, effect, 91A-3-307
Proof and findings required, 91A-3-308
Special administrator, 91A-3-614(1)
Successor personal representative, 91A-3-301(5), (6)
Supervised administration, effect on informal proceedings, 91A-3-503
Time limitations, 91A-3-108
Venue, 91A-3-201
Waiting period required, 91A-3-307(1)

INFORMAL PROBATE PROCEEDINGS
Application to clerk, contents, 91A-3-301(1), (2)
Declination of informal probate, cause, 91A-3-303(2), 91A-3-304, 91A-3-305
Findings required, 91A-3-303
Foreign wills eligible, 91A-3-303(4), (5)
Notice requirements, 91A-3-204, 91A-3-306
Oath requirements, 91A-3-301, 91A-3-303(1)

INFORMAL PROBATE PROCEEDINGS (Continued)
Original wills eligible, 91A-3-301(2)
Previously probated wills eligible, 91A-3-303(4)
Proceedings blocking informal probate
formal testacy proceedings, 91A-3-401
supervised administration, 91A-3-503
Proof of execution, 91A-3-303(3)
Statement of informal probate by clerk, 91A-3-302
Time limit, 91A-3-108
Venue, 91A-3-201
Waiting period required, 91A-3-302

INFORMAL PROCEEDINGS
See also INFORMAL APPOINTMENT PROCEEDINGS, PERSONAL REPRESENTATIVES; INFORMAL PROBATE PROCEEDINGS
Defined, 91A-1-201(20)
Described, 91A-3-301

INHERITANCE
See DEVOLUTION; INTESTATE SUCCESSION; WILLS

INHERITANCE TAX
See ESTATE TAXES; TAXES

INSURANCE
Bonds—See BONDS
Casualty
liability insurance claim excluded from nonclaim, 91A-3-803(3)
purchase
by conservator, 91A-5-424(3)(q)
by personal representative, 91A-3-713(15)
specifically devised property, proceeds, 91A-2-608
Life
asset of probate estate, 91A-3-105
death benefits, nontestamentary, 91A-6-101
excluded from augmented estate, 91A-2-202(2)
fraud on creditors, 91A-3-710
homicide of insured by beneficiary, effect, 91A-2-803(3)
proceeds payable as credit against elective share, 91A-2-202(3)
protected person's, powers exercised by court annuity purchased, 91-A-5-409
exercise of options, 91A-5-408(3)
testamentary additions to life insurance trust, 91A-2-511

INTERESTED PERSON
Defined, 91A-1-201(21)
Rights
demand for bond
conservator's, 91A-5-416
personal representative's, 91A-3-605
demand for notice
estate proceedings, decedents, 91A-3-204
protective proceedings, 91A-5-406
initiation of proceedings—See PROCEEDINGS
representation, 91A-1-403

INTER VIVOS TRUSTS
Defined, 91A-201(45)
Pour-overs
incorporation of writings by reference, 91A-2-510
reference to independent acts, events, 91A-2-512
testamentary additions to trusts, 91A-2-511
Protected persons, by court, 91A-5-408(3), 91A-5-409
Registration, excuse of requirement, general powerholder, 91A-1-108
Reverse pour-over, 91A-6-101
Trustee defined, 91A-201(46)

INTESTATE SUCCESSION
See ADMINISTRATION, DECEDENTS' ESTATES; PERSONAL REPRESENTATIVE
Adoption, effect, 91A-2-109
Advancement, 91A-2-110
Afterborn heirs, 91A-2-108
Alien's inheritance, 91A-2-111
Annulment, effect, 91A-2-109
Child defined, 91A-1-201(3), 91A-2-109
pretermitted, share, 91A-2-302
Curtesy abolished, 91A-2-112
Divorce, effect, 91A-2-802
Dower abolished, 91A-2-112
Halfblood, rights, 91A-2-107
Heirs
defined, 91A-1-201(18)
determined
in formal testacy proceedings, 91A-3-409, 91A-3-412
orders closing estates, 91A-3-1001, 91A-3-1002
statutory determination, 91A-2-103
Homicide, effect on succession, 91A-2-803
Illegitimates—See ILLEGITIMACY AND ILLEGITIMATES
Intestacy
adjudicated—See FORMAL TESTACY PROCEEDING
intestate estate defined, 91A-2-101
Parent defined for intestate succession, 91A-1-201(29), 91A-2-109
Renunciation of succession, 91A-2-801
Representation, taking by, 91A-2-106
Rights of inheritance
heirs other than spouse
order of taking, 91A-2-103
taking by representation, 91A-2-106
issue, 91A-2-103
parents, 91A-2-103
spouse, 91A-2-102
state, if no taker, 91A-2-105
disposition of unclaimed property, 91A-3-914
Separation, effect, 91A-2-204, 91A-2-802
Survivorship requirement, 91A-2-104

INVENTORY
See APPRAISERS AND APPRAISEMENT
Decedent's estate, 91A-3-706, 91A-3-707
Foreign personal representative, right to inspect estate assets, 91A-4-203
Protected person's estate, 91A-5-418

J

JOINT TENANCY
Elective share, augmented estate computed, 91A-2-202
Homicide, effect, 91A-2-803(2)
Protected person's, powers of court, 91A-5-408, 91A-5-409
preservation of estate plan, 91A-5-427

JUDGE
Jurisdiction, 91A-3-105
comment, 91A-3-105
Powers, 91A-1-302, 91A-1-307

JUDGMENTS
See also ORDERS; PROCEEDINGS
Binding on all personal representatives, 91A-4-401
Court power to make, 91A-1-302

JURISDICTION OF COURT
Of persons
conservator, 91A-5-413
foreign personal representative, 91A-4-301 to 91A-4-303
guardians, 91A-5-208, 91A-5-305
interested persons, 91A-1-403, 91A-3-106
personal representative, 91A-3-602
Of subject matter, general, 91A-1-302
decedents' estates, 91A-3-105
guardianship, 91A-5-102
protective proceedings, 91A-5-102, 91A-5-402
taxes, 91A-3-916

JURY TRIAL
Advisory jury, effect, 91A-1-306(2)
Constitutional right to, 91A-1-306(1)
Guardianship proceedings, right of incapacitated person, 91A-5-303(2)
Will contests, 91A-1-306(1)

K

KIN
See HEIRS; INTESTATE SUCCESSION

L

LAPSE
Anti-lapse provision, 91A-2-605
Failure in residuary devise, 91A-2-606
Pour-over will, 91A-2-511
Survivorship requirement, 91A-2-605

LEASE
Decedents' estates, powers of personal representative, 91A-3-713(9), (10)
Defined, 91A-1-201(23)
mineral lease included, 91A-1-201(23)
Possession of rented property, 91A-3-708
Protected persons' estates
conservator's powers, 91A-5-424(3)(j), (k)
court powers, 91A-5-409

LETTERS
Copies, issuance, 91A-1-305
Defined, 91A-1-201(24)
Letters of administration, personal representative
conservator, powers as personal representative endorsed on, 91A-5-425(5)
erroneous, protection against, 91A-3-702, 91A-3-712
foreign representative, proof, 91A-4-201
priority among different letters, 91A-3-702
qualification for, 91A-3-601
restrictions, endorsed on supervised administrators, 91A-3-504
Letters of conservatorship
endorsement, powers as personal representative, 91A-5-425(5)
limitations on powers, endorsed, 91A-5-426
recording of, effective as notice of title, 91A-5-421
Letters of guardianship of minors, indication of source of appointment, 91A-5-208

LIABILITY
Conservator, 91A-5-429
Distributees, 91A-3-412(5), 91A-3-909, 91A-3-1005, 91A-3-1007
Elective share, augmented estate recipients, 91A-2-205(4), 91A-2-207(2), (3)
Fraud cases, 91A-1-106
Personal representatives, 91A-3-702, 91A-3-710, 91A-3-808, 91A-3-1003, 91A-3-1006

LIENS
See ENCUMBRANCES
Taxes, lien of state on estate property for unpaid, 91A-3-1010

LIFE INSURANCE
See INSURANCE

LIMITATIONS
Appointment proceedings, 91A-3-108
Claims
nonclaim, 91A-3-803
statutes of limitations, 91A-3-802
Decedent's cause of action, tolling of, 91A-3-109
Elective share proceedings, 91A-2-205
Fraud actions, 91A-1-106
Objection to distribution proposal, 91A-3-906(2)
Probate proceedings, 91A-3-108
Proceedings against
conservator, prevented after final accounts, 91A-5-419
distributees, 91A-3-1007
personal representatives, 91A-3-1006
Renunciation of succession, 91A-2-801
Testacy proceedings, 91A-3-108
Unclaimed property recovery, 91A-3-914

LITIGATION
See also ACTIONS, SPECIFIC; COMPENSATION AND EXPENSES; PROCEEDINGS
Conservator, power to sue, 91A-5-424(3)(x)
Personal representative
estates and third persons, jurisdiction, 91A-3-105
power to sue, 91A-3-713(22)
right to expenses, 91A-3-721

LOCAL ADMINISTRATION
See ANCILLARY ADMINISTRATION; FOREIGN PERSONAL REPRESENTATIVES

M

MARITAL DEDUCTION
Estate tax apportionment, 91A-3-916
Family allowance, comment, 91A-2-403
Surviving spouses' intestate shares, comment, 91A-2-104

MARRIAGE
See also DIVORCE AND ANNULMENT; SPOUSE
Remarriage, effect on revoked will, 91A-2-508
Status for rights as surviving spouse, 91A-2-802

MINORS
Defined, 91A-1-201(25)
Minor wards
defined, 91A-5-101(4)
personal guardianship—See GUARDIANS OF MINORS
property protection and management
cause for, 91A-5-401—See CONSERVATOR AND CONSERVATORSHIP; PROTECTIVE PROCEEDINGS
facility of payment or delivery, 91A-5-103
Representation by parent, 91A-1-403 (2)(b)

MISSING PERSONS
Absence as evidence of death, 91A-1-107
Disposition of unclaimed property, 91A-3-914(1)
Evidence of status, 91A-1-107
Recovery, right, limitations, 91A-3-412(5), 91A-3-914(2)
Representation, right, 91A-1-403(4)

MORTGAGES
See ENCUMBRANCES

MULTI-STATE ESTATES
See ANCILLARY ADMINISTRATION; FOREIGN PERSONAL REPRESENTATIVE

N

NEXT OF KIN
See HEIRS; INTESTATE SUCCESSION

NON-PROBATE TRANSFERS
Contracts providing for payment or transfer at death, 91A-6-101
Pour-over—See POUR-OVER
Will substitutes—See WILL SUBSTITUTES

NONRESIDENT DECEDENT
Ancillary administration—See ANCILLARY ADMINISTRATION
Defined, 91A-1-201(27)
Foreign personal representatives—See FOREIGN PERSONAL REPRESENTATIVES
Local administration
application of Uniform Probate Code, 91A-1-301
priority for appointment, 91A-3-203
venue, 91A-3-201
Venue for administration, 91A-3-201

NOTICE
Alleged decedent, notice to, 91A-3-403(2)
Consent to notice
by conservator, 91A-5-413
by foreign personal representative, 91A-4-301, 91A-4-302, 91A-4-303
by guardian
of incapacitated person, 91A-5-305
of minor, 91A-5-208
by personal representative, 91A-3-602
Creditors, 91A-3-801
Demand for notice, by interested persons
estate proceedings, 91A-3-204
protective proceedings, 91A-5-406
Elective share proceedings, 91A-2-205
Formal appointment, 91A-3-414
Formal testacy proceedings, 91A-3-403
Guardianship
incapacitated persons, 91A-5-301(1), (2), 91A-5-305, 91A-5-309
minors, 91A-5-207, 91A-5-208, 91A-5-212
Informal appointment, 91A-3-310
Informal probate, 91A-3-306
Interested persons, 91A-1-403, 91A-3-204, 91A-5-406
Method of giving
court-ordered, 91A-1-401(2)
delivery, 91A-1-401(1)
mailing, 91A-1-401(1)
publication, 91A-1-401(1)
Proof of notice, 91A-1-401
Represented interests, 91A-1-403
Service, estate proceedings, 91A-3-106

NOTICE (Continued)
Settlements, 91A-1-403(3), 91A-3-1102
Supervised administration, 91A-3-502
Time of notice, 91A-1-401
Waiver of notice, 91A-1-402

O

OATHS AND AFFIRMATIONS
Falsification, penalties for false swearing, 91A-1-309
Filed documents, general requirements, 91A-1-309
Records—See RECORDS

ORDERS
See also PROCEEDINGS
Court power to make, 91A-1-302
Demand for notice of, 91A-3-204, 91A-5-406
Interested persons bound by
in exclusive jurisdiction of court, 91A-3-106
prior notice requirements, 91A-1-401, 91A-1-403(3)—See also NOTICE
representation, 91A-1-403(2)

P

PARENT
Defined, 91A-1-201(29)
Delegation of power of attorney by, 91A-5-104
Relationships determined for succession
adopting parents, 91A-2-109, 91A-2-611
paternity in illegitimacy, 91A-2-109, 91A-2-611
Testamentary appointment of guardians, 91A-5-202, 91A-5-301

PENSION PLAN
Elective share
credited against spouse's share, 91A-2-202(3)
excluded from augmented estate, 91A-2-202(2)
Nontestamentary provisions in, 91A-6-101

PERSONAL LIABILITY OF FIDUCIARIES
See also LIABILITY
Conservator's, 91A-5-429
Personal representative's, 91A-3-808

PERSONAL REPRESENTATIVE
Administration by
ancillary—See ANCILLARY ADMINISTRATION; FOREIGN PERSONAL REPRESENTATIVE
authority to administer, source and scope, 91A-3-303, 91A-3-701 to 91A-3-704
duties—See Duties in administration, below
powers—See Powers in administration, below
proceedings—See Proceedings in administration, below
summary administration, 91A-3-1203
supervised administration—See SUPERVISED ADMINISTRATION
Administrator, defined as personal representative, 91A-1-201(31)
Appointment
acceptance of
consent to jurisdiction by, 91A-3-602
required to receive letters, 91A-3-601
accrual of powers and duties by, 91A-3-103, 91A-3-701
administration commenced by, 91A-3-103
authority to distribute intestate estates by, 91A-3-703(2)
erroneous dual appointment, effect, 91A-3-702
formal appointment proceedings—See FORMAL APPOINTMENT PROCEEDINGS

PERSONAL REPRESENTATIVE (Continued)
Appointment (Continued)
informal appointment proceedings—See INFORMAL APPOINTMENT PROCEEDINGS
limitations, exceptions, 91A-3-108
priority for appointment
adjudicated, cause, 91A-3-203(2), (5), 91A-3-414
order of, 91A-3-203(1), (2), (8)
rights of nomination, 91A-3-203(3), (4)
special administrator, 91A-3-615
qualifications, 91A-3-203(6)
renunciation of right to appointment, 91A-3-203(3)
termination of appointment
authority ended by, 91A-3-608
by death or disability, 91A-3-609
certificate discharging liens securing performance, 91A-3-1008
closing of estate, 91A-3-610(1), (2), 91A-3-1001, 91A-3-1003(2), 91A-3-1004
discharge, by order of court, 91A-3-1001, 91A-3-1002
jurisdiction unaffected by, 91A-3-608
liability unaffected by, 91A-3-608
removal, cause, proceedings, 91A-3-611
resignation, 91A-3-610
testacy status changed, new appointment, 91A-3-612
Bond
amount, 91A-3-604
court order for, conditions, 91A-3-603
demand for bond, 91A-3-605
failure to give, cause for removal, 91A-3-605
filing with clerk, 91A-3-604
liens securing performance, in lieu of, 91A-3-603, 91A-3-604
protection against unbonded representatives, comment, 91A-3-603
recovery of, 91A-3-606(1)
reduction of, 91A-3-604
requirement, 91A-3-603
sureties, liabilities, 91A-3-606
terms and conditions, 91A-3-606
Claims—See CLAIMS AGAINST DECEDENTS' ESTATES
Closing estates—See CLOSING ESTATES
Compensation and expenses, 91A-3-719, 91A-3-721
review, 91A-3-722
Conflict of interest by, 91A-3-711
Conservator
acquiring powers as personal representative, 91A-5-425(5)
priority for appointment, 91A-3-203(4)
Corepresentatives
joint action requirement, 91A-3-717
surviving corepresentative, powers, 91A-3-718
Court, relation of representative to
acts authorized without court order, 91A-3-704
initiation of proceedings, 91A-3-704
judgments binding, 91A-4-401
jurisdiction—See Jurisdiction, below
proceedings—See Proceedings in administration, below
scope of proceedings, 91A-3-107
supervised administrator, duty to court, 91A-3-501
Definition, 91A-201(31)
Distributive powers and duties—See DISTRIBUTION, DECEDENTS' ESTATES
Duties in administration
accrual, time, 91A-3-701
appraisement, 91A-3-706
bond, 91A-3-604
breach of duty
cause for removal, 91A-3-611
effect on transactions, 91A-3-711, 91A-3-712, 91A-3-910

PERSONAL REPRESENTATIVE (Continued)
Duties in administration (Continued)
breach of duty (Continued)
liability, 91A-3-710
limitations on proceedings against fiduciary, 91A-3-1006
protection of purchasers, third persons, 91A-3-712, 91A-3-910
claims, payment—See CLAIMS AGAINST DECEDENTS' ESTATES
estate taxes, payment, 91A-3-708, 91A-3-916
fiduciary duty, general, 91A-3-703
information of appointment to interested persons, 91A-3-705
inventory, 91A-3-706, 91A-3-707
possession of estate, 91A-3-708
special administrator's duty, 91A-3-616, 91A-3-617
supervised personal representative, 91A-3-501
Executor
authority prior to appointment, 91A-3-701
defined as personal representative, 91A-1-201(31)
divorce, revokes nomination as, 91A-2-508
priority for appointment, 91A-3-203(1)
as special administrator, 91A-3-615
Fees, 91A-3-719, 91A-3-721
review, 91A-3-722
Foreign personal representative—See FOREIGN PERSONAL REPRESENTATIVE
Guardian, right to appointment, 91A-3-203(4)
Insurance, purchase, 91A-3-713(15)
Jurisdiction
of domiciliary representatives, 91A-3-106, 91A-3-602
of estate proceedings, 91A-1-302, 91A-3-105
of foreign representatives, 91A-4-301 to 91A-4-303
of supervised administrators, 91A-3-501
Letters
copies, requirements, 91A-1-305
erroneous, effect, 91A-3-702
necessity for, 91A-3-103
priority among, 91A-3-702
qualification for, 91A-3-601
restrictions on, 91A-3-504
Liability
breach of duty, 91A-3-710
fiduciary, 91A-3-703, 91A-3-908
limitations on proceedings against, 91A-3-1006
personal, 91A-3-808
standing to sue, 91A-3-703(3)
Notice
by representative, to creditors, 91A-3-801
time and method, 91A-1-401
to representative, of proceedings, 91A-3-602
Powers in administration
accrual
method, 91A-3-103
time, 91A-3-701
authority, source
appointment, 91A-3-701, 91A-3-703
court orders, 91A-3-703
statutory, of code, 91A-3-103, 91A-3-703, 91A-3-704
terms of will, 91A-3-703
employment of persons
attorneys, agents, 91A-3-713(21), 91A-3-720
review, 91A-3-722
estate assets, powers over, 91A-3-713
improper exercise, effect, 91A-3-722, 91A-3-711, 91A-3-712
initiation of proceedings, 91A-3-105, 91A-3-704
recovery of probate estate
for estate taxes, 91A-3-916(4), (6), (7)
general, 91A-3-708

PERSONAL REPRESENTATIVE (Continued)
Powers in administration (Continued)
recovery of probate estate (Continued)
nontestamentary transfers at death, 91A-6-101
voidable transfers by decedent, 91A-3-709
restraining orders, effect, 91A-3-607
restrictions on powers
on commencement of formal testacy proceedings, 91A-3-401
supervised administration, 91A-3-503(3), 91A-3-504
special administrator's powers, 91A-3-616, 91A-3-617
successor representative's powers, 91A-3-613
surviving corepresentative's powers, 91A-3-718
transactions authorized, 91A-3-713
Proceedings in administration—See also ACTIONS, SPECIFIC; PROCEEDINGS
against representative, 91A-3-105, 91A-3-808, 91A-3-1006
appointment—See FORMAL APPOINTMENT PROCEEDINGS; INFORMAL APPOINTMENT PROCEEDINGS
by representative, 91A-3-105, 91A-3-704, 91A-3-708, 91A-3-713(22), 91A-3-1001, 91A-3-1002
claim proceedings—See CLAIMS AGAINST DECEDENTS' ESTATES
jurisdiction, 91A-3-105, 91A-3-106
proceedings affecting powers and duties, 91A-3-401, 91A-3-503(3)
removal, 91A-3-611
restraining order, 91A-3-607
review of fees, employment, 91A-3-722
terminating administration, appointment—See CLOSING ESTATES
venue, 91A-3-201
Protection of person dealing with representative, 91A-3-712
Special administrator—See SPECIAL ADMINISTRATOR
Status of personal representative, 91A-3-103
Successor personal representative, 91A-3-613
Supervised personal representative—See SUPERVISED ADMINISTRATION
Termination of administration—See CLOSING ESTATES
Termination of appointment—See Appointment, above

PETITION
Defined, 91A-1-201(32)
Proceedings initiated by—See PROCEEDINGS

PHYSICIAN
Examination by
disability established, 91A-5-407
incapacity established, 91A-5-303
Fees, 91A-5-414

POST MORTEM CLAIMS
See COSTS OF ADMINISTRATION

POUR-OVER
Incorporation of writings by reference in will, 91A-2-510
Reference to independent acts, disposition by, 91A-2-512
Reverse pour-over, 91A-6-101
Testamentary additions to trust, 91A-2-511

POWER OF APPOINTMENT
Defined, comment, 91A-1-108
Exercise, by general residuary clause in will, 91A-2-603, 91A-2-610
General power holder
deemed to act for beneficiaries, 91A-1-108
orders binding, bind beneficiaries, 91A-1-403
Inclusion in elective share of property derived by, 91A-2-202(3)
Protected person's, exercise, 91A-5-408(3)

POWER OF ATTORNEY
Delegated by parent or guardian, 91A-5-104
Disability or death of principal, effect
clause for durable power of attorney, 91A-5-501
validity until notice of death or disability, 91A-5-502

PRE-PROVED WILL
Execution requirements, form, 91A-2-504
Probate of, contested cases, 91A-3-406(2)

PRESUMED DECEDENT, PROVISIONS FOR
Notice of, 91A-3-403(2)
Proof of death or status, 91A-1-107
Recovery of property, rights, 91A-3-412(5)
Search for, 91A-3-403(2), 91A-3-412(5)

PROBATE COURT
See COURT
Defined, 91A-1-201(6)

PROBATE OF WILLS
Construction of wills—See WILLS
Contests, require formal testacy proceedings—See FORMAL TESTACY PROCEEDING
Destroyed wills, formal probate only, 91A-3-402(2)
Foreign wills, proof required
formal probate, 91A-3-409
informal probate, 91A-3-303(4), (5)
Formal probate proceedings—See FORMAL TESTACY PROCEEDINGS
Informal probate proceedings—See INFORMAL PROBATE PROCEEDINGS
Jurisdiction, 91A-3-105
Late-discovered wills
barred after final orders, 91A-3-410
cause for vacation, 91A-3-412(1), (4)
Lost wills, formal probate only, 91A-3-402(2)
Previously probated wills
final orders of other jurisdictions conclusive, 91A-3-408
formal probate of informally probated will, 91A-3-401
comment, 91A-3-401
informal probate of wills probated elsewhere, 91A-3-301(2)
Probate order—See FORMAL TESTACY PROCEEDINGS; INFORMAL PROBATE PROCEEDINGS
necessity of, 91A-3-102

PROBATE PROCEEDINGS
See also ADMINISTRATION, DECEDENTS' ESTATES; FORMAL APPOINTMENT PROCEEDINGS; INFORMAL APPOINTMENT PROCEEDINGS; PERSONAL REPRESENTATIVE; SUPERVISED ADMINISTRATION
Estate proceedings, generally, 91A-3-105
Formal proceedings defined, 91A-1-201(16)—See FORMAL TESTACY PROCEEDINGS
Informal proceedings defined, 91A-1-201(20)—See INFORMAL PROBATE PROCEEDINGS
Venue, 91A-3-201

PROCEEDINGS
Decedents' estates
concurrent jurisdiction, 91A-3-105—See ACTIONS, SPECIFIC
exclusive jurisdiction, 91A-3-105
appointment—See FORMAL APPOINTMENT PROCEEDINGS; INFORMAL APPOINTMENT PROCEEDINGS; PERSONAL REPRESENTATIVE
bond, 91A-3-603, 91A-3-604
claims, 91A-3-806, 91A-3-807—See CLAIMS
closing, 91A-3-1001, 91A-3-1002—See CLOSING ESTATES
compromise agreements, court approved, 91A-3-1102
elective share, 91A-2-205
probate—See FORMAL TESTACY PROCEEDINGS; INFORMAL PROBATE PROCEEDINGS
removal, 91A-3-611
reopening administration, 91A-3-1009
restraining orders, 91A-3-607
review of fees and employment, 91A-3-722
supervised administration, 91A-3-501 to 91A-3-505—See SUPERVISED ADMINISTRATION
testacy—See FORMAL TESTACY PROCEEDINGS

PROCEEDINGS (Continued)
Decedents' estates (Continued)
independence of proceedings, 91A-3-107
initiation
by interested persons, 91A-3-105
by personal representative, 91A-3-704
limitations—See LIMITATIONS
scope, 91A-3-107
time limits—See LIMITATIONS
venue, 91A-1-303, 91A-3-201
Guardianship of incapacitated persons
accounts, 91A-5-312(1)(e)
appointment, 91A-5-303, 91A-5-304
jurisdiction, 91A-5-102, 91A-5-313
removal, 91A-5-307
resignation, 91A-5-307
venue, 91A-5-302, 91A-5-313
Guardianship of minors
accounts, 91A-5-209(4)
appointment, 91A-5-204, 91A-5-206, 91A-5-207
jurisdiction, 91A-5-102, 91A-5-211
removal, 91A-5-212
resignation, 91A-5-212
venue, 91A-5-205
Probate proceedings—See FORMAL TESTACY PROCEEDINGS; INFORMAL PROBATE PROCEEDINGS
Protective proceedings—See PROTECTIVE PROCEEDINGS

PROMISSORY NOTE
Nontestamentary provisions, 91A-6-101

PROOF
Death or status, 91A-1-107
Due execution of wills
foreign wills certified copies, 91A-3-303(4), (5), 91A-3-409
formal probate, 91A-3-405 to 91A-3-407
informal probate, 91A-3-303
Letters—See LETTERS
Pre-proved will, 91A-2-504
Self-proved will, 91A-2-504
Valid power of attorney, 91A-5-502

PROPERTY
Collection by affidavit, 91A-3-1201, 91A-4-204
Defined, 91A-1-201(34)
Devolution, 91A-3-101, 91A-3-901
Disputes, jurisdiction, 91A-3-105
Estates, defined, 91A-1-201(12)
augmented estate, in elective share, 91A-2-202
for estate tax purposes, 91A-3-916
Exempt property—See EXEMPT PROPERTY AND ALLOWANCES
Location, 91A-3-201(4)
Management—See CONSERVATOR AND CONSERVATORSHIP; PROTECTIVE PROCEEDINGS
Protection—See CONSERVATOR AND CONSERVATORSHIP; PROTECTIVE PROCEEDINGS
Title—See TITLE

PROTECTION OF THIRD PERSONS
Discharge after making payment
to foreign conservators, 91A-5-431
to foreign personal representatives, 91A-4-205
to personal representatives, 91A-3-712
to successors of small estates, 91A-3-1202
under facility of payment clause, 91A-5-103
Mistaken letters, protection, 91A-3-702

PROTECTION OF THIRD PERSONS (Continued)
Persons dealing with fiduciaries, protection against conservators, 91A-5-423
corepresentatives, acting alone, 91A-3-717
personal representatives, 91A-3-712
Possessing estate, against alleged decedent, 91A-3-412(5)
Purchasers from distributees, 91A-3-910
Purchasers of augmented estate portions, 91A-2-207
Resident creditors, 91A-4-206

PROTECTIVE PROCEEDINGS
See also CONSERVATOR AND CONSERVATORSHIP
Cause for, 91A-5-401
Claims against protected person
concurrent jurisdiction, 91A-5-402(3)
enforcement, 91A-5-428
Compensation and expenses, 91A-5-414
Defined, 91A-5-101
Disability as cause, 91A-5-401
distinguished from incapacity, comment, 91A-5-304
Estate plan of protected person, duties, 91A-5-427
Fees, 91A-5-414
Jurisdiction
concurrent, claims, 91A-5-402(3), 91A-5-428
exclusive, 91A-5-402(1), (2)
Minority as cause, 91A-5-401
Notice requirements
demand for notice, 91A-5-406
to conservator, 91A-5-413
to protected person, 91A-5-405
waiver, 91A-5-405
Powers of court—See also CONSERVATOR AND CONSERVATORSHIP, Powers
exercised directly or through conservotor, 91A-5-408
management
disabled person's affairs, orders permitted, 91A-5-408(3)
minor's affairs, orders permitted, 91A-5-408(2)
powers pending initial protective order, 91A-5-408(1)
prior notice and hearing required, 91A-5-408(4)
protective arrangements authorized, 91A-5-409
single transactions authorized, 91A-5-409
special conservator, appointment, 91A-5-409(3)
Proceedings
accounts, 91A-5-419
appointment of conservator or original protective order
findings required, 91A-5-407
hearing, 91A-5-407
notice, 91A-5-405, 91A-5-406
petition, contents, 91A-5-404
protective order, appointment order, 91A-5-407
representation, rights, 91A-5-407
bond, 91A-5-411, 91A-5-416
claims, 91A-5-428
enlargement or limitation of powers, 91A-5-426
prior to court orders, requirements, 91A-5-408(4)
subsequent orders, 91A-5-416
termination, 91A-5-430
venue, 91A-5-403
Protected person
capacity not affected by conservatorship, 91A-5-408(5)
defined, 91A-5-101, 91A-5-401
rights
jury trial, 91A-1-306
notice, 91A-5-405
representation, 91A-5-407, 91A-5-430

R

RECEPTACLE TRUSTS
See POUR-OVER; TRUSTS AND TRUSTEES

RECORDS
Acceptance statements
guardians, testamentary appointment, 91A-5-202, 91A-5-301
personal representative, 91A-3-601
Applications, informal probate or appointment, 91A-3-301
Bond
conservator's, 91A-5-411
personal representative's, 91A-3-604
Certified copies
foreign personal representative, 91A-4-201
foreign wills, 91A-3-303(4), (5), 91A-3-408, 91A-3-409
issuance, by clerk of court, 91A-1-305
Clerk of court, duties, 91A-1-305
Closing statement, 91A-3-1003
Demand for bond
conservator, 91A-5-416
personal representative, 91A-3-605
Demand for notice
concerning decedent's estate, 91A-3-204
of protective proceedings, 91A-5-406
Filed documents, requirements, 91A-1-309
Inventory
decedent's estate, 91A-3-706, 91A-3-707
protected person's estate, 91A-5-418
Letters, 91A-1-305
Objections
appointment of personal representative, 91A-3-203(2)
probate of will, 91A-3-404
testamentary appointment of guardian, 91A-5-203, 91A-5-301(4)
Orders, generally, 91A-1-305
Petitions, generally, 91A-1-305
Renunciation
right to appointment, 91A-3-203(3)
succession, 91A-2-801
Statement of claim, 91A-3-804(1)
Statement of resignation, 91A-3-610(3)
Title, record notice of conservator's, 91A-5-421
Waiver
of notice, 91A-1-402
of rights as spouse to benefits, 91A-2-204

RECOVERY, RIGHT OF
By alleged decedent, 91A-3-412(5)
By missing person, 91A-3-914(2)

RELATIVE
See HEIRS; INTESTATE SUCCESSION
Defined, 91A-2-103
comment, 91A-2-605

RELEASE OF ASSETS
See aso PROTECTION OF THIRD PERSONS
By affidavit
to foreign conservator, 91A-5-431
to foreign personal representative, 91A-4-204
to successors of small estates, 91A-3-1201

RENUNCIATION OF SUCCESSION
Applicable to testate or intestate estates, 91A-2-801(1)
Court power to renounce protected person's interests, 91A-5-408(3), (4)

RENUNCIATION OF SUCCESSION (Continued)
Effective date provision, 91A-2-801(7)
Procedure, time limit, 91A-2-801(1), (2)
Renounced interest, method of passing, 91A-2-801(3)
Right to renounce barred, conditions, 91A-2-801(4)

REPEAL
Construction against, 91A-1-105
Repealing clause, 91A-6-104, note

REPRESENTATION OF INTERESTS
Guardian ad litem, 91A-1-403(4)—See GUARDIAN AD LITEM
Orders binding represented interests, 91A-1-403(2)

REPRESENTATION, TAKING BY
Class gifts, 91A-2-605
Intestate shares, heirs', 91A-2-103
Rule for, 91A-2-106

REVOCABLE TRUSTS
See TRUSTS AND TRUSTEES

RULES OF CIVIL PROCEDURE
Appellate review, 91A-1-308
Proceedings governed by, 91A-1-304
Rules of evidence, 91A-1-107
Vacation of orders, 91A-1-304

RULES OF CONSTRUCTION
Against implied repeal, 91A-1-105
Severability, 91A-1-104
Uniform Probate Code, 91A-1-102
Wills—See WILLS, Rules of construction

S

SATISFACTION OF DEVISE
Ademption, 91A-2-612

SECURITIES
Defined, 91A-1-201(37)
Personal representative, powers, 91A-3-713
Protected person's
  conservator, powers, 91A-5-424
  court, powers, 91A-5-408(3), (4)
Specifically devised
  accession or change, effect on devise, 91A-2-607(1)
  nonademption, 91A-2-607(2)
Transfer of, if no administration, 91A-3-1201(2)
Valuation, for distribution in kind, 91A-3-906

SECURITY
See ENCUMBRANCES

SELF-PROVED WILL
Execution requirements, form, 91A-2-504
Probate of, contested cases, 91A-3-406(2)

SEPARATION
Effect on status as spouse, 91A-2-802
Property settlement waiving marital rights, 91A-2-204

SERVICE OF NOTICE
Conservator, 91A-5-413
Estate proceedings, interested persons generally, 91A-3-106

SERVICE OF NOTICE (Continued)
Foreign personal representative, 91A-4-303
Guardians, 91A-5-208, 91A-5-305
Personal representative, 91A-3-602

SETTLEMENT
See ADMINISTRATION, DECEDENTS' ESTATES; CLOSING ESTATES; DISTRIBUTION, DECEDENTS' ESTATES; PERSONAL REPRESENTATIVE
Compromise of estate controversies—See COMPROMISE OF ESTATE CONTROVERSIES
Estate settlement defined, 91A-1-201(38)
Property settlement, divorce or separation, 91A-2-204
Settlement proposals, 91A-3-1101, 91A-3-1102

SEVERABILITY, 91A-1-104

SIMULTANEOUS DEATH
See DEATH

SMALL ESTATES
Administrative procedure
notice to creditors not required, 91A-3-1203
summary distribution, 91A-3-1203
Closing statement, requirements, 91A-3-1204
effect, 91A-3-1003
termination of appointment, 91A-3-1204(2)
Collection of personal property without administration
by affidavit
contents required, 91A-3-1201
discharge by, 91A-3-1202
waiting period required, 91A-3-1201
recovery, proceedings, 91A-3-1202
title
successors' rights, 91A-3-901
transfer, method, 91A-3-1201(2)
value maximum of eligible estates, 91A-3-1201(1) (a)
Distribution, 91A-3-1203
Summary procedure, 91A-3-1203
Value, small estates, 91A-3-1203

SPECIAL ADMINISTRATOR
Appointment
cause for, 91A-3-614
formal, 91A-3-614(2)
informal, 91A-3-614(1)
priority for, 91A-3-615
Powers and duties—See PERSONAL REPRESENTATIVE
formally appointed, 91A-3-617
informally appointed, 91A-3-616
Termination, 91A-3-618

SPENDTHRIFT TRUST
Affected by compromise of controversies, 91A-3-1101

SPOUSE
Divorce, annulment
effect on status as spouse, 91A-2-802
will revoked by, 91A-2-508
Elective share of, 91A-2-201—See ELECTIVE SHARE
Intestate share of, 91A-2-102
Legal separation, effect, 91A-2-802
Marital rights
property settlement in separation or divorce, effect, 91A-2-204
waiver of, 91A-2-204
Omitted from will, share, 91A-2-301
Remarriage, effect on revoked will, 91A-2-508

SPOUSE'S ELECTION
See ELECTIVE SHARE

STATE
Defined, 91A-1-201(40), 91A-3-916
Intestate estate taken by, 91A-2-105
Missing person's share, to escheat fund, 91A-3-914
Territory under Uniform Probate Code, 91A-1-301

STATUTES OF LIMITATION
See aso LIMITATIONS
Claims against decedent, 91A-3-802
Tolled re decedent's cause of action, 91A-3-109

STOCKS
See SECURITIES

SUCCESSION
Devolution—See DEVOLUTION
Divorce, annulment, separation, effect on, 91A-2-802
Heirs—See HEIRS
Homicide, effect on, 91A-2-803
Intestate succession—See INTESTATE SUCCESSION
Renunciation of, 91A-2-801
Testate succession—See WILLS

SUCCESSORS
As distributees—See DISTRIBUTION, DECEDENTS' ESTATES
Defined, 91A-1-201(42)
Determined
devisees, 91A-3-1001, 91A-3-1002
heirs—See INTESTATE SUCCESSION
Rights if no administration, 91A-3-901, 91A-3-1201, 91A-3-1202

SUMMARY ADMINISTRATION
See SMALL ESTATES

SUMMARY DISTRIBUTION
See SMALL ESTATES

SUPERVISED ADMINISTRATION
See also PERSONAL REPRESENTATIVES
Closing, 91A-3-505
Commencement of proceeding
adjudication on testacy, priority, 91A-3-502
findings, 91A-3-502
order, 91A-3-502
petition, scope, contents, 91A-3-502
Defined, nature, 91A-3-501
Denied, cause, 91A-3-502
Distribution orders, 91A-3-505
Interim orders, 91A-3-505
Notice requirements
before closing orders, 91A-3-505
before order opening administration, 91A-3-502
Pendency, effect
informal applications stayed, 91A-3-503(1)
informally probated will, 91A-3-401, 91A-3-503(2)
restrictions, previously appointed representative, 91A-3-503(3)
Supervised personal representative—See also PERSONAL REPRESENTATIVE
duty to court, 91A-3-501
letters, restrictions endorsed, 91A-3-504
powers and duties, 91A-3-501, 91A-3-504
Termination, 91A-3-505, 91A-3-1001

SUPPORT
Guardian, power to institute support proceedings, 91A-5-312(1)(d)(i)

SUPPORT ALLOWANCE
See EXEMPT PROPERTY AND ALLOWANCES

SURCHARGE
Conservator, 91A-5-425(1), 91A-5-429(4)
Personal representative, 91A-3-703(2), 91A-3-808(4)

SURETIES, BONDS
Conservator's, 91A-5-411, 91A-5-412
Personal representative's, 91A-3-604, 91A-3-606

SURVIVORSHIP
See also DEATH

Anti-lapse, requirement for deceased devisee, issue, 91A-2-605
Devisees, requirement, 91A-2-601
Heirs, 91A-2-104
Uniform Simultaneous Death Act, comment, 91A-2-104

SURVIVORSHIP PROPERTY
Computed in augmented estate, 91A-2-202

T

TAXES
See also ESTATE TAXES

Allowances and exempt property included in computing exemptions from inheritance tax, 91A-2-405
Closing estate, department of revenue certificate prerequisite, 91A-3-1004
Conservator, duty to pay, 91A-5-424(3)(t)
Excluded from definition of claim, 91A-1-201(4)
Inventory and appraisement, copy to department of revenue, 91A-3-706, 91A-3-707
Joint tenancies and life estates, procedures for termination of, 91A-3-1205
Lien of state on estate property for unpaid taxes, 91A-3-1010
Nonresident decedent
  determination of taxes, certificate of department of revenue, 91A-4-202
  foreign personal representative, copy of appointment, affidavit, and inventory and appraisal filed with department of revenue, 91A-4-201
Personal representative, duty to pay, 91A-3-708, 91A-3-713(18)
Sale of estate property, requirements, 91A-3-715.1

TERRITORIAL APPLICATION, UNIFORM PROBATE CODE, 91A-1-301

TESTAMENTARY APPOINTMENT OF GUARDIANS
Of incapacitated persons, 91A-5-301
Of minors, 91A-5-202, 91A-5-203

TESTAMENTARY CLASSIFICATION OF CONTRACTS, ETC., 91A-6-101

TESTAMENTARY TRUSTS
Compromise agreements binding on, 91A-3-1101
Defined, 91A-1-201(45)
Distribution from decedents' estates, 91A-3-913
Nontestamentary arrangements excluded, 91A-6-101
Registration, excuse of requirement, general power holder, 91A-1-108
Testamentary additions to trusts, 91A-2-511
Trustee
  defined, 91A-1-201(46)
  status, as devisee, distributee, successor, comment, 91A-3-913

TESTIMONY
See PROOF
Formal testacy proceedings, 91A-3-405, 91A-3-406

TIME LIMITS
See LIMITATIONS

TITLE
Actions to determine, decedents' estates
jurisdiction of disputes, 91A-3-105
personal representative, power to initiate actions, 91A-3-708
Conservator, title by appointment, 91A-5-420
Deed of distribution
distributee's title by, 91A-3-908
for distributions in kind, 91A-3-907
for exempt property and allowances, 91A-2-404
purchasers protected through, 91A-3-910
Devolution of, on death, 91A-3-101, 91A-3-901
Muniment of
deed of distribution, 91A-3-907, 91A-3-908, 91A-3-910
will as, comment, 91A-3-712
Personal representative
possession of estate, 91A-3-708
transactions authorized, 91A-3-713
Protection of third persons
persons dealing with fiduciaries, 91A-3-702, 91A-3-712, 91A-3-717, 91A-5-423
purchasers from distributees, 91A-3-910
purchasers from donee, elective share, 91A-2-207
Transfer
proof of transfer without administration, 91A-3-1201
to conservator, by appointment, 91A-5-420, 91A-5-421
to distributees of decedents' estates, 91A-3-708, 91A-3-907, 91A-3-908
Voidable title, conflict of interest—See VOIDABLE TRANSFERS
conservator, 91A-5-422
personal representative, 91A-3-711

TITLE, UNIFORM PROBATE CODE
Long, p. 2
Short, 91A-1-101

TRANSFERS
See also RELEASE OF ASSETS
During marriage
by decedent, included in augmented estate, 91A-2-202(1)
by spouse, credited against elective share, 91A-2-202(3)
Non-probate transfers—See NON-PROBATE TRANSFERS
Personal representative
power to avoid voidable transfers by decedent, 91A-3-709
transfers by, 91A-3-713
Title—See TITLE

TRIAL BY JURY
See JURY TRIAL

TRUST REGISTRATION
Excuse of requirement, general power holder, 91A-1-108

TRUSTS AND TRUSTEES
Beneficiary defined, 91A-1-201(2)
Bound by compromise agreements, 91A-3-1101
Defined, 91A-1-201(45), (46)
Inter vivos trust—See INTER VIVOS TRUSTS
Registration, excuse of requirement, general power holder, 91A-1-108
Testamentary trusts—See TESTAMENTARY TRUSTS
Trustees
defined, 91A-1-201(46)
as fiduciary, 91A-1-201(14)

U

UNBORN CHILDREN
Pretermitted, provision for share, 91A-2-302
Rights, intestate succession, 91A-2-108

UNCLAIMED PROPERTY, DISPOSITION OF, 91A-3-914

UNIFORM ACTS
Uniform Absence as Evidence of Death and Absentees' Property Act, comment, 91A-1-107
Uniform Ancillary Administration of Estates Act, comment, 91A-4-401
Uniform Simultaneous Death Act, comment, 91A-2-104
Uniform Testamentary Additions to Trusts Act, 91A-2-511
Uniform Veterans Guardianship Act, General Comment, p. 140

V

VACATION OF ORDERS
Rules of civil procedure govern, 91A-1-304
Testacy orders, 91A-3-412, 91A-3-413

VENUE
Multiple proceedings, effect, 91A-1-303
Proceedings—See PROCEEDINGS
Transfer, 91A-1-303

VISITOR
Defined, 91A-5-308
Guardianship proceedings, incapacitated persons, 91A-5-303(2), 91A-5-307(3)
Protective proceedings, disabled persons, 91A-5-407

VOIDABLE TRANSFERS
Conflict of interest
  conservators, 91A-5-422
  personal representatives, 91A-3-711
Distributions, errors in, 91A-3-907, 91A-3-908
Fraudulent transfers by decedent, 91A-3-709
Purchasers protected—See PROTECTION OF THIRD PERSONS
Title of convervator, 91A-5-420

W

WARD
Defined, 91A-5-101
Personal guardianship
  guardians of incapacitated persons—See GUARDIAN OF INCAPACITATED PERSONS
  guardians of minors—See GUARDIANS OF MINORS
Protection of property—See CONSERVATOR AND CONSERVATORSHIP; PROTECTIVE PROCEEDINGS

WIDOW'S ELECTION
  See ELECTIVE SHARE

WILL CONTESTS
  See FORMAL TESTACY PROCEEDINGS

WILLS
Age, minimum, for execution, 91A-2-501
Bequests, separate lists, requirements, 91A-2-513
Burning, 91A-2-507
Cancellation, 91A-2-507
Choice of law by testator
  execution and formal validity of will, 91A-2-506
  meaning and legal effect of will, 91A-2-602

WILLS (Continued)
Class gifts
adopted persons, halfbloods, illegitimates as issue, 91A-2-611
anti-lapse, 91A-2-605
Codicil, as will, 91A-1-201(48)
Confidential nature, protected, 91A-2-901
Conservator, authority to examine, 91A-2-901, 91A-5-427
Construction
choice of laws, 91A-2-602
effect of order at domicile, 91A-3-408
proceedings to construe, 91A-3-105, 91A-3-1001, 91A-3-1002
rules—See Rules of construction, below
Contest—See FORMAL TESTACY PROCEEDINGS
penalty clause, validity, 91A-3-905
Contract to make or not revoke, 91A-2-701
Custodian, duties and liability, 91A-2-901, 91A-2-902
Custody, 91A-2-901
Delivery to court, 91A-2-901, 91A-2-902
conservator, duties, 91A-5-425(5)
failure, penalty, 91A-2-902
Deposit, 91A-2-901
Destruction, 91A-2-507
Devise
abatement, order, 91A-3-902
anti-lapse, 91A-2-605
defined, 91A-1-201(8)
distribution—See DISTRIBUTION, DECEDENTS' ESTATES
failure of, effect, 91A-2-606
nonademption, 91A-2-607, 91A-2-608
renunciation of, 91A-2-801
Devisee
class gifts, 91A-2-605, 91A-2-611
deceased devisee, effect, 91A-2-605
defined, 91A-1-201(9)
determined, 91A-3-1001, 91A-3-1002
testamentary trustee as, 91A-1-201(9)
comment, 91A-3-913
Divorce or annulment
effect on succession, 91A-2-802
will revoked by, 91A-2-508
Execution, formalities
attested wills, 91A-2-502
holographic wills, 91A-2-503
self-proved wills, 91A-2-504
separate lists of bequests, 91A-2-513
wills under law chosen by testator, 91A-2-506
Holographic wills, 91A-2-503
Homicide, effect, 91A-2-803(1)
Issue, defined, 91A-1-201(22), 91A-2-611
Obliteration, 91A-2-507
Omitted spouse, rights, 91A-2-301
Pour-over wills—See POUR-OVER
Pre-proved wills, 91A-2-504
Pretermitted chid, rights, 91A-2-302
Probate of wills—See PROBATE OF WILLS
formal probate—See FORMAL TESTACY PROCEEDINGS
informal probate—See INFORMAL PROBATE PROCEEDINGS
Reference to disposition outside will
incorporation of writings by reference, 91A-2-510
independent acts, events affecting disposition, 91A-2-512
separate lists of bequests, 91A-2-513
Revival of revoked will
by remarriage to former spouse, 91A-2-508
rule, 91A-2-509
Revocation
by act of destruction, 91A-2-507
by annulment or divorce, 91A-2-508

WILLS (Continued)
Revocation (Continued)
partial revocation, 91A-2-507
subsequent will, 91A-2-507
Rules of construction
ademption by satisfaction, 91A-2-612
after-acquired property, passes, 91A-2-604
anti-lapse, 91A-2-605
class gifts
anti-lapse applicable, 91A-2-605
generic terms defined for, 91A-2-611
exercise of power of appointment, 91A-2-610
exoneration, construction against, 91A-2-609
failure of devise, effect, 91A-2-606
intention of testator controls, 91A-2-603
choice of law, 91A-2-602
nonademption, specific devises
if conservator, in case of sale, condemnation, casualty, 91A-2-608
securities, 91A-2-607(2)
property passed by will, 91A-2-604
securities as specific devises
accession or change, effect, 91A-2-607(1)
nonademption, 91A-2-607(2)
survivorship requirement, 91A-2-601
Self-proved will, 91A-2-504
Signature requirements
general, 91A-2-502
holographic will, 91A-2-503
separate list of bequests, 91A-2-513
Testamentary additions to trusts, 91A-2-511
Witnesses, eligibility, 91A-2-505

WILL SUBSTITUTES
Ademption by satisfaction, 91A-2-612
Adjudication
jurisdiction, 91A-3-105
settlement of controversies, 91A-3-1102
Advancements, 91A-2-110
Agreements among successors, 91A-3-912
Contracts to make or not revoke wills, 91A-2-701
Death benefits, nontestamentary, 91A-6-101
Elective share, included in augmented estate, 91A-2-202
For protected persons, court powers, 91A-5-408
Renunciation of succession in post-mortem estate planning, 91A-2-801

TITLE 92—WORKMEN'S COMPENSATION ACT

Chapter 1. Industrial accident board—creation and powers, 92-101, 92-111, 92-116.1, 92-117 to 92-121.
2. Defenses—election to come under act, 92-202.1, 92-204.1, 92-204.2, 92-206, 92-208, 92-212 to 92-214.
3. Hazardous occupations to which act applies, Repealed—Section 6, Chapter 443, Laws of 1973.
4. Meaning of words employed in act, 92-410.1, 92-411, 92-413, 92-417 to 92-418.1, 92-423.1, 92-423.2, 92-425, 92-426, 92-429, 92-432, 92-435, 92-438.1, 92-439 to 92-441.
5. Compensation to certain heirs and beneficiaries, 92-502, 92-506 to 92-508.
6. Claims—liability for injury under different plans of act, 92-601, 92-607 to 92-609, 92-614 to 92-619.
7. Compensation for various injuries—amount—payment, 92-701.1, 92-702.1, 92-703.1, 92-704.1, 92-704.2, 92-705, 92-706.1, 92-707 to 92-709.2, 92-710, 92-715.
8. Miscellaneous regulations—powers of division—rehearings and appeals, 92-804, 92-806, 92-808, 92-814, 92-814.1, 92-818, 92-820, 92-826, 92-842, 92-844 to 92-852.
9. Compensation plan No. 1, 92-901 to 92-908.
10. Compensation plan No. 2, 92-1002, 92-1004, 92-1005, 92-1007, 92-1008, 92-1010.
11. Compensation plan No. 3, 92-1101, 92-1103 to 92-1105.1, 92-1108, 92-1110, 92-1112 to 92-1115, 92-1117 to 92-1123.
12. Safety provisions, Repealed—Sections 6 to 8, Chapter 176, Laws of 1957; Section 30, Chapter 341, Laws of 1969.
13. Occupational Disease Act, 92-1302, 92-1303.1, 92-1304, 92-1305, 92-1310, 92-1311, 92-1312.1, 92-1314, 92-1314.1, 92-1315 to 92-1315.2, 92-1316 to 92-1321, 92-1323 to 92-1325, 92-1330, 92-1334.1, 92-1335, 92-1337, 92-1339, 92-1340, 92-1343, 92-1346, 92-1352, 92-1358.
14. Rehabilitation of injured workers, 92-1401 to 92-1403, 92-1406.

CHAPTER 1—INDUSTRIAL ACCIDENT BOARD—CREATION AND POWERS

Section 92-101. Name of act—what each part to contain.
92-111. Office and furnishings—quarters.
92-116.1. Administration fund.
92-117. Blank forms, minutes and records.
92-118. Reports and bulletins which may be published.
92-119. Fees of division.
92-120. Attorney general legal adviser of division.
92-121. Merit system.

92-101. (2816) **Name of act—what each part to contain.** This act shall be known and may be cited as the Workmen's Compensation Act or the Workers' Compensation Act. Part I (sections 92-101 to 92-843) shall contain those sections which have a general application to the whole of the act, and may be referred to as the "general provisions"; part II (sections 92-901 to 92-908) shall contain those sections which refer to compensation plan number one; part III (sections 92-1001 to 92-1012) shall contain those sections which refer to compensation plan number two; part IV (sections 92-1101 to 92-1123) shall contain those sections which refer to compensation plan number three.

History: En. Sec. 1, Ch. 96, L. 1915; Sec. 29, Ch. 341, L. 1969; amd. Sec. 86, re-en. Sec. 2816, R. C. M. 1921; amd. Ch. 23, L. 1975.

Amendments

The 1969 amendment deleted "part V (sections 92-1201 to 92-1222) shall contain those sections which may be referred to as the 'safety provisions' " from the end of the section.

The 1975 amendment added "or the Workers' Compensation Act" at the end of the first sentence.

Repealing Clause

Section 30 of Ch. 341, Laws 1969 read "Sections 41-1701 through 41-1707, 92-1201 through 92-1210 and 92-1214 through 92-1222, R. C. M. 1947, are repealed."

References

Benoit v. Murphy Corp., 143 M 463, 391 P 2d 350.

92-104, 92-105. (2819, 2820) Repealed.

Repeal

Sections 92-104, 92-105 (Sec. 2, Ch. 96, L. 1915; Sec. 1, Ch. 95, L. 1919; Sec. 1, Ch. 254, L. 1921; Sec. 1, Ch. 161, L. 1953; Sec. 1, Ch. 231, L. 1959; Sec. 1, Ch. 148, L. 1961; Sec. 9, Ch. 225, L. 1963; Sec. 15, Ch. 237, L. 1967), relating to terms, salaries, and vacancies of the industrial accident board, were repealed by Sec. 88, Ch. 23, Laws 1975.

92-106, 92-107. (2821, 2822) Repealed.

Repeal

These sections (Sec. 2, Ch. 96, L. 1915; Sec. 1, Ch. 81, L. 1941; Sec. 1, Ch. 235, L. 1947), relating to bonds of member and employees of the industrial accident commission, were repealed by Sec. 51, Ch. 177, Laws 1965. For new provisions relating to bonds for state officers and employees, see sec. 6-105 et seq.

92-108 to 92-110. (2823 to 2825) Repealed.

Repeal

Sections 92-108 to 92-110 (Sec. 2, Ch. 96, L. 1915; Sec. 2, Ch. 231, L. 1959), relating to ex officio members, quorum, findings, decisions, and seal of the industrial accident board, were repealed by Sec. 88, Ch. 23, Laws 1975.

92-111. (2826) Office and furnishings—quarters. The division shall keep its principal office in the capital of the state. It may rent or lease quarters for the conduct of its administrative duties.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2826, R. C. M. 1921; amd. Sec. 1, Ch. 234, L. 1969; amd. Sec. 1, Ch. 23, L. 1975.

Amendments

The 1969 amendment deleted ",and shall be provided with suitable rooms, necessary office furniture, stationery, and other supplies" from the end of the first sentence and substituted the present second sentence for one reading, "For the purpose of holding sessions in other places the board shall have power to rent temporary quarters."

The 1975 amendment substituted "division" for "board."

92-112 to 92-115. (2828 to 2830) Repealed.

Repeal

Sections 92-112 to 92-115 (Sec. 2, Ch. 96, L. 1915), relating to appointment, terms, duties, and payment of salaries of the secretary and other assistants or employees of the industrial accident board, were repealed by Sec. 88, Ch. 23, Laws 1975.

92-116. (2831) Repealed.

Repeal

Section 92-116 (Sec. 2, Ch. 96, L. 1915; Sec. 1, Ch. 176, L. 1957; Sec. 164, Ch. 147, L. 1963), relating to deposit of fees, fines and assessments and their application to administrative expenses, was repealed by Sec. 2, Ch. 253, Laws 1973. For new law, see sec. 92-116.1.

92-116.1. Administration fund. (1) A workers' compensation administration fund is established, out of which all costs of administering

the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the division must administer are to be paid upon lawful appropriation. The following moneys collected by the workers' compensation division shall be deposited in the state treasury to the credit of the workers' compensation administrative fund and shall be used for the administrative expenses of the division:

(a) all fees and fines provided in 92-119, 92-820, and 92-1358;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state insurance fund. The assessments shall be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the act, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer shall be less than $200. The assessments shall be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans using proper accounting and cost allocation procedures. Plan No. 3 shall be assessed an amount sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above. Other sources of revenue including unexpended funds from the preceding fiscal year shall be used to reduce the costs before levying the assessments.

(2) The administration fund shall be debited with expenses incurred by the division in the general administration of the provisions of this act, including the salaries of its members, officers, and employees, and the travel expenses of the members, officers, and employees, as provided for in 59-538, 59-539, and 59-801, as amended, incurred while on the business of the division either within or without the state.

(3) Disbursements from the administration moneys shall be made after being approved by the division upon claim therefor.

History: En. 92-116.1 by Sec. 1, Ch. 253, L. 1973; amd. Sec. 1, Ch. 318, L. 1975; amd. Sec. 28, Ch. 453, L. 1977.

Title of Act

An act providing for amendatory language to an existing funding procedure provided in a new section; and repealing section 92-116, R. C. M. 1947.

Amendments

The 1975 amendment divided the section into subsections; substituted "Occupational Disease Acts and the various occupational safety acts the division must administer" for "Occupational Disease and Occupational Safety and Health Act" in subsection (1); deleted "92-1334" from subdivision (1)(a) after "92-820"; inserted subdivision (1)(b); rewrote subdivision (1)(c) which read "all assessments paid to the division by employers who elect to become bound by plan no. 1 of this act; all assessments paid to the division of insurers who insure employers under plan no. 2 of this act; all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law; all assessments levied against the industrial insurance account in the division fund as provided by this act"; deleted a former last paragraph which read "The division shall levy against the industrial insurance account in the division fund an assessment in an amount deemed reasonable and necessary to provide adequate administrative funds for the administration of the various acts. The assessment is to be levied against the gross annual direct premium income for the previous fiscal year, less return premiums, and said assessment shall be

paid forthwith by the treasurer into the administration moneys in the earmarked revenue fund"; and made minor changes in style.

The 1977 amendment substituted "workers' compensation" for "workmen's compensation" throughout the section; substituted "travel expenses of the members, officers, and employees, as provided for in 59-538, 59-539, and 59-801, as amended" in subsection (2) for "actual and necessary traveling expenses and disbursements of such members, officers and employees"; and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 2 of Ch. 253, Laws 1973 read "Section 92-116, R. C. M. 1947, is repealed."

92-117. (2832) **Blank forms, minutes and records.** The division shall cause to be printed such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act. It shall provide a book in which shall be entered the minutes of all its proceedings, a book of record in which shall be recorded all awards made by the division, and such other books or records as it shall deem requisite for the purpose and efficient administration of this act. All such records are to be kept in the office of the division.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2832, R. C. M. 1921; amd. Sec. 2, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section.

92-118. (2833) **Reports and bulletins which may be published.** The division shall have the power and authority to publish and distribute at its discretion from time to time, in addition to its report required by section 2 [82-4002] of this act, such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2833, R. C. M. 1921; amd. Sec. 41, Ch. 93, L. 1969; amd. Sec. 3, Ch. 23, L. 1975.

Amendments

The 1969 amendment substituted the reference to the reporting requirements of section 82-4002 for former reference to annual reports.

The 1975 amendment substituted "division" for "board" at the beginning of the section.

92-119. (2834) **Fees of division.** The division shall have power and authority to charge and collect the following fees:

(1) For copies of papers and records not required to be certified or otherwise authenticated by the division, fifteen cents (15¢) for each folio; for certified copies of official documents and orders filed in its office, or of the evidence taken at any hearing, twenty cents (20¢) for each folio.

(2) To fix and collect reasonable charges for publications issued under its authority.

(3) The fees charged and collected under this section shall be paid monthly into the treasury of the state, to the credit of the earmarked revenue fund, and shall be accompanied by detailed statement thereof.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2834, R. C. M. 1921; amd. Sec. 165, Ch. 147, L. 1963; amd. Sec. 4, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section; and made minor changes in style.

92-120. (2835) **Attorney general legal adviser of division.** (1) The attorney general shall be the legal adviser of the division, and shall represent it in all proceedings whenever so requested by the division or any member thereof.

(2) The division may, in the investigation and defense of cases under plan three of the Workers' Compensation Act, employ such other attorney or legal adviser, as it deems necessary, and pay for the same out of the industrial insurance account in the agency fund.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2835, R. C. M. 1921; amd. Sec. 1, Ch. 162, L. 1937; amd. Sec. 174, Ch. 147, L. 1963; amd. Sec. 5, Ch. 23, L. 1975.

Amendments

The 1975 amendment divided the section into subsections; substituted "division" for "board" throughout the section; substituted "Workers' Compensation Act" in subsection (2) for "Workmen's Compensation Act"; and made minor changes in phraseology.

92-121. Merit system. Employees of the division, except the administrator, are included within the joint merit system if such inclusion is required for the receipt of federal funds by 29 CFR 1902.3 (h), or by any other federal law or regulation.

History: En. 92-121 by Sec. 1, Ch. 332, L. 1973.

Title of Act

An act providing for inclusion of certain employees of the division of workmen's compensation within the joint merit system.

CHAPTER 2—DEFENSES—ELECTION TO COME UNDER ACT

Section 92-202.1. Employments covered and employments exempted from coverage.
92-204.1. Election of employer and employee to come under act—action against third party causing injury.
92-204.2. Subrogation.
92-206. Compensation plan No. 3 exclusive, etc., when a public corporation is the employer.
92-208. Employees bound by act—election.
92-212. Uninsured employers fund.
92-213. Election of uninsured employee to take under the fund or bring action against employer—limitation on benefit entitlement under the fund.
92-214. Effective date of uninsured employers' fund.

92-201. (2386) **Repealed.**

Repeal

Section 92-201 (Sec. 3, Ch. 96, L. 1915), relating to excluded defenses, was repealed by Sec. 9, Ch. 550, Laws 1977.

92-202. (2837) **Repealed.**

Repeal

Section 92-202 (Sec. 3, Ch. 96, L. 1915; Sec. 1, Ch. 121, L. 1925), relating to certain employers for whom defenses are not excluded in personal injury actions, was repealed by Sec. 2, Ch. 492, Laws 1973.

92-202.1. Employments covered and employments exempted from coverage. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employees as defined in 92-410.1 and to all employees as defined in 92-411. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provi-

sions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under the act and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) Household and domestic employment.

(b) Casual employment as defined in 92-436.

(c) Employment of members of an employer's family dwelling in the employer's household.

(d) Employment of sole proprietors or working members of a partnership.

(e) Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States.

(f) Any person performing services in return for aid or sustenance only.

History: En. 92-202.1 by Sec. 1, Ch. 492, L. 1973; amd. Sec. 1, Ch. 550, L. 1977.

Title of Act

An act providing for exempted employments from coverage under the Workmen's Compensation Act; and repealing section 92-202, R. C. M. 1947.

Amendments

The 1977 amendment inserted subsection (1); designated the former section as subsection (2) and rewrote the introductory phrase which read "This act shall not apply to any of the following employments unless the employer elects coverage under this act"; inserted "and domestic" in subdivision (2)(a); added "as defined in 92-436" to subdivision (2)(b); and made minor changes in phraseology and style.

Repealing Clause

Section 2 of Ch. 492, Laws 1973 read "Section 92-202, R. C. M. 1947, is repealed."

DECISIONS UNDER FORMER LAW

Agricultural Employment

Custom combiner who hired out his services to farmers and harvested crops he did not raise or own was not engaged in agricultural employment and was not exempt from workmen's compensation laws. State ex rel. Romero v. District Court, Eighth Judicial Dist., Cascade County, — M —, 513 P 2d 265.

Equal Protection

Exclusion of employers engaged in farming and stock raising from the requirements of this act by former section 92-202 was a legitimate classification by the legislature and not in conflict with United States Constitution Fourteenth Amendment. State ex rel. Hammond v. Hager, 160 M 391, 503 P 2d 52, appeal dismissed 411 US 912, 36 L Ed 2d 303, 93 S Ct 1548.

92-203. (2838) Repealed.

Repeal

Section 92-203 (Sec. 3, Ch. 96, L. 1915), relating to limitation of employers' liability, was repealed by Sec. 9, Ch. 550, Laws 1977.

92-204. (2839) Repealed.

Repeal

Section 92-204 (Sec. 3, Ch. 96, L. 1915; Sec. 1, Ch. 138, L. 1933; Sec. 1, Ch. 230, L. 1943; Sec. 2, Ch. 235, L. 1947; Sec. 1, Ch. 270, L. 1969), relating to elective coverage, to exclusion of other remedies, to remedies in tort against third parties, and to subrogation, was repealed by Sec. 2, Ch. 493, Laws 1973. For new law, see sec. 92-204.1.

92-204.1. Election of employer and employee to come under act—action against third party causing injury. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under the act, the provisions of the act are exclusive. Except as provided in 92-212, 92-213, and 92-214 for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death or personal injury to any employees covered by the Workers' Compensation Act. The Workers' Compensation Act binds the employee himself, and in case of death binds his personal representative, and all persons having any right or claim to compensation for his injury or death, as well as the employer, and the servants and employees of such employer, and those conducting his business during liquidation, bankruptcy or insolvency. The right to compensation and medical benefits as provided by this act is not affected by the fact that the injury, occupational disease, or death is caused by the negligence of a third party other than the employer, or the servants or employees of the employer. Whenever such event occurs to an employee while performing the duties of his employment and such event is caused by the act or omission of some persons or corporations other than his employer, or the servants or employees of his employer, the employee, or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this act, have a right to prosecute any cause of action he may have for damages against such persons or corporations. However, if an employee receives an injury while performing the duties of his employment and the injury or injuries, so received by the employee, are caused by the intentional and malicious act or omission of a servant or employee of his employer, then the employee, or in case of his death, his heirs or personal representatives, shall, in addition to the right to receive compensation under the Workers' Compensation Act, have a right to prosecute any cause of action he may have for damages against the servants or employees of his employer, causing the injury.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977.

Title of Act

An act providing for election of employers and employees to come under the Workmen's Compensation Act; providing for actions against third party causing injury; providing for a right to subrogation; and repealing section 92-204, R. C. M. 1947.

Amendments

The 1977 amendment substituted the first sentence for an enumeration of the rights surrendered by the election to come under the act; inserted the second sentence; substituted "the Workers' Compensation Act" at the beginning of the third sentence for "such election"; deleted provisions at the end of the section concerning the employer's and insurer's rights of subrogation; and made minor changes in phraseology and punctuation.

Repealing Clause

Section 2 of Ch. 493, Laws 1973 read "Section 92-204, R. C. M. 1947, is repealed."

Assault by Supervisor

Where discharged probationary employee had allegedly been "patted on the rear" and called obscene names by supervisory employee prior to discharge, employee's sole remedy for alleged acts constituting assault was under Workmen's Compensation Act, and court held that "pat on the rear" was legal trifle, and nominal damages of $1 were sufficient. Brown v. Stauffer Chemical Co., — M —, 539 P 2d 374.

DECISIONS UNDER FORMER LAW

Exclusive Remedy

Where employee was injured while performing work assigned to him under contract between his employer and second company, failure of second company to file timely injury report with industrial accident board prevented it from invoking exclusive jurisdiction in board as "exclusive remedy" after employee filed civil suit in district court. State ex rel. Broesder v. Industrial Accident Board, 154 M 178, 461 P 2d 456.

Injured employee receiving workmen's compensation benefits was barred from seeking damages for same injuries in negligence action against coemployee. Madison v. Pierce, 156 M 209, 478 P 2d 860.

Employee who had received workmen's compensation benefits for personal injury was precluded from maintaining action against owner of 98% of corporate stock on theory he was co-employee, since act granted immunity to co-employees. Baird v. Remoir, 156 M 348, 480 P 2d 186.

Where electric company's independent contractor was specifically required to carry workmen's compensation insurance, an employee of the contractor could not bring an action in tort against the electric company for injuries he suffered when a pole broke. Buerkle v. Montana Power Co., 157 M 57, 482 P 2d 564.

Employer's immunity from common-law liability remains even when there have been wanton, willful and intentional violations of safety statutes, and the immunity is abrogated only if the injury itself was intentionally inflicted. Enberg v. Anaconda Co., 158 M 135, 489 P 2d 1036.

Where both employer and employee elected to come under the Montana Workmen's Compensation Act, the provisions of the act were exclusive. If benefits provided by the act were not paid by the employer, the employee's sole remedy was with the workmen's compensation division. Carlson v. Anaconda Co., — M —, 529 P 2d 356.

Employee, having elected to be bound by workmen's compensation law, and being compensated thereunder, was not entitled to maintain an action against employer for negligence, notwithstanding contention that employer's actions were willful and therefore not within statute barring employee's action against employer for common-law negligence; employee was not third-party beneficiary of safety clauses in contract between employer and United States and could not maintain action against employer for common-law negligence in absence of express promise in contract between employer and United States to pay damages to employee for employer's negligence. Hensley v. United States, 279 F Supp 5·8.

Where independent contractor defense is not applicable to general employer, general employer is substituted for immediate employer and is liable for injury under Workmen's Compensation Act and claimant cannot maintain common-law personal injury action against general employer. Campbell v. Shell Oil Co., 329 F Supp 846.

General Contractor's Liability

Bank which required independent contractor to provide workmen's compensation coverage against the claims of employees of a subcontractor was immune from suit by employee of subcontractor to recover damages suffered, allegedly due to bank's negligence. State ex rel. First Nat. Bank & Trust Co. v. District Court, — M —, 505 P 2d 408.

General employer was immune from suit by independent contractor's employee for injuries sustained in performing work on the general employer's electrical lines where contractor provided workmen's compensation coverage although general employer did not require it to do so in the contract. Fiscus v. Beartooth Electric, — M —, 522 P 2d 87.

Intentional and Malicious Act

Where injured employee had gotten along well with defendant foreman up to the time of accident, and could not say that the foreman had anything personal against him, and where it appeared that the foreman was away from the job site at the time of the accident, the provision of former 92-204 permitting an injured worker to bring suit against a coworker if his injuries were the result of the coworker's "intentional and malicious act or omission," was inapplicable as a matter of law. Boyer v. Kloepfer, — M —, 554 P 2d 1116.

Joint Venture As Employer

Individual members of joint venture are "employers" within act and as such are immune from tort actions for death of employees of joint venture. Hamman v. United States, 267 F Supp 420.

Right To Sue Third Party

Provision in this section for exclusive remedy under this act does not preclude a defendant who is liable at common law to employee from seeking indemnity from plaintiff's employer as third-party defendant on an indemnity agreement. DeShaw v. Johnson, 155 M 355, 472 P 2d 298.

Plaintiff, who received workmen's compensation benefits for injuries sustained

while in the employ of independent contractor, was denied claim against the landowners since they exercised no control over work area. Baird v. Chokatos, 156 M 32, 473 P 2d 547.

The amount of injured workman's recovery from uninsured motorist coverage cannot be reduced by any workmen's compensation benefits received by him; insurance commissioner had no authority to approve a policy providing for such reduction. Sullivan v. Doe, 159 M 50, 495 P 2d 193.

Employee of joint venture was entitled to sue engineering firm in relation of independent contractor as to joint venture for engineering firm's negligence causing injury to employee under that portion of statute (prior to 1969 amendment) giving right of action against third parties when injuries are caused by act of some person other than employer. Hamman v. United States, 267 F Supp 420.

Subrogation—Oral Agreement

Where there was oral contract to compromise subrogation rights alleged, there was issue of fact concerning its existence, and plaintiff was entitled to trial by jury; therefore, action for declaratory judgment to construe alleged contract was improper. State ex rel. Industrial Indemnity Co. v. District Court, — M —, 544 P 2d 438.

Subrogation to Wrongful Death Settlement

Subrogation rights of employer's insurer extended to wrongful death benefits recovered from third-party tort-feasor by workman's surviving kin. Fisher v. Missoula White Pine Sash Co., — M —, 518 P 2d 795, holding that statement in Hardware Mutual Cas. Co. v. Butler, 116 M 73, 148 P 2d 563 that subrogation rights of employer and insurer against third-party tort-feasor may exist independently of the Workmen's Compensation Act was dictum and should be disregarded.

92-204.2. Subrogation. (1) If an action is prosecuted as provided for in 92-204.1 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2) (a) If the injured employee intends to institute the third party action, he shall give the insurer reasonable notice of his intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorneys' fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorneys' fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the third party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement which is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorneys' fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) If the amount of compensation and other benefits payable under the Workers' Compensation Act have not been fully determined at the time the employee, the employee's heirs or personal representatives, or the insurer have settled in any manner the action as provided for in this section, the division shall determine what proportion of the settlement shall be allocated under subrogation. The division's determination may be appealed to the workers' compensation judge.

History: En. 92-204.2 by Sec. 3, Ch. 550, L. 1977.

Title of Act

An act amending sections 92-202.1, 92-204.1, 92-435, and 92-614, R. C. M. 1947; creating an uninsured employers' fund to grant to all employees in this state workers' compensation benefits even if their employers are not properly insured; providing for funding of the fund; defining insurer; and repealing sections 92-201, 92-203, 92-205, 92-207.1, 92-209, 92-210, 92-211, and 92-1102, R. C. M. 1947.

92-205. (2839.1) **Repealed.**

Repeal

Section 92-205 (Sec. 2, Ch. 138, L. 1933), relating to defenses to actions by employees, was repealed by Sec. 9, Ch. 550, Laws 1977.

92-206. (2840) **Compensation plan No. 3 exclusive, etc., when a public corporation is the employer.** Where a public corporation is the employer, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this act by any public corporation shall be considered to be ordinary and necessary expense of such corporation, and the governing body of such public corporation shall make appropriation of and pay such sums, into the accident or administration fund, as the case may be, at the time and in the manner provided for in this act, notwithstanding that such governing body may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise. Whenever a contractor is engaged as an employer in the performance of contract work for a public corporation, such employer must elect to be bound by the terms, conditions and provisions of either compensation plan No. 2 or compensation plan No. 3, and the terms, conditions and provisions of the plan chosen shall be compulsory and obligatory upon both employer and employee. Whenever any public corporation neglects or refuses to file with the division monthly payroll report of its employees, the division may levy an arbitrary assessment upon such public corporation in an amount of twenty-five dollars for each such assessment, which assessments shall be collected in the manner provided in this act for the collection of assessments.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R. C. M. 1921; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975.

Amendments

The 1971 amendment deleted "or any contractor engaged in the performance of contract work for such public corporation" after "is the employer" in the first sentence; and completely rewrote the third sentence.

The 1975 amendment substituted "division" for "board" in the last sentence; and made a minor change in phraseology.

92-207. (2841) Repealed.

Repeal

Section 92-207 (Sec. 3, Ch. 96, L. 1915; Sec. 1, Ch. 119, L. 1939; Sec. 1, Ch. 135, L. 1941; Sec. 3, Ch. 235, L. 1947), relating to coverage of employers in hazardous industries, was repealed by Sec. 2, Ch. 282, Laws 1973.

92-207.1. Repealed.

Repeal

Section 92-207.1 (Sec. 1, Ch. 282, L. 1973), relating to penalty for employer's failure to elect compensation plan, was repealed by Sec. 9, Ch. 550, Laws 1977.

92-208. (2842) Employees bound by act—election. Every employee whose employer is bound by the provisions of this act shall become subject to and be bound by the provisions of that plan of compensation which shall have been adopted by his employer except that pursuant to such rules and regulations as the division shall from time to time promulgate, and subject in all cases to the review of the division, officers of private corporations may elect not to be bound as employees under the act by a written notice in the form provided by the division, served in the following manner:

(1) If the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering said notice to the board of directors of the employer.

(2) If the employer has elected to be bound by the provisions of compensation plan No. 2, by delivering said notice to the board of directors of the employer or the insurer.

(3) If the employer has elected to be bound or is bound by the provisions of compensation plan No. 3, by delivering said notice to the division of workmen's compensation.

(4) The appointment or election of an officer of a corporation for the purpose of excluding an employee from coverage under the act shall not entitle such officer to elect not to be bound as an employee under the act.

In any case, the notice shall be signed by the officer under oath or equivalent affirmation and is subject to the penalties for false swearing.

(5) The division shall review any officers of private corporation's election not to be bound as an employee to assure compliance with this act.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2842, R. C. M. 1921; amd. Sec. 1, Ch. 95, L. 1963; amd. Sec. 1, Ch. 145, L. 1971; amd. Sec. 1, Ch. 95, L. 1974.

Amendments

The 1971 amendment inserted "that pursuant to such rules and regulations as the board shall from time to time promulgate, and subject in all cases to the approval of the board" in the preliminary paragraph.

The 1974 amendment substituted "division" for "board" in the preliminary paragraph; substituted "review of the division" for "approval of the board" in the preliminary paragraph; substituted "division of workmen's compensation" for "industrial accident board" at the end of subdivision (3); added subdivisions (4) and (5); and made minor changes in punctuation and style.

92-209 to 92-211. (2844 to 2846) Repealed.

Repeal

Sections 92-209 to 92-211 (Sec. 3, Ch. 96, L. 1915; Sec. 4, Ch. 235, L. 1947; Sec. 2, Ch. 95, L. 1963; Sec. 1, Ch. 443, L. 1973), relating to elections of coverage, were repealed by Sec. 9, Ch. 550, Laws 1977.

92-212. Uninsured employers fund. (1) There is created an uninsured employers fund. The purpose of the fund is to pay to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3. For the purposes of this section, the words "uninsured employer" mean an employer who has not properly complied with the provisions of 92-202.1. The division shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) The fund shall be funded in the following manner:

(a) The division shall require that the uninsured employer pay to the fund a penalty of either double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $500, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the division shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment prior to July 1, 1977, may not be made.

(b) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer.

(c) In no event may an uninsured employer's combined liability under subsections (2)(a) and (2)(b) of this section exceed $30,000.

(d) The division may, at the beginning of each fiscal year, determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 92-709.1(13)(a) shall be paid to the uninsured employers' fund rather than the subsequent injury fund.

(3) If, upon demand of the division, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (2)(a) and (2)(b) above, the sums may be collected by the division through suit. The division may settle through compromise with an uninsured employer the amount due the fund under this section.

(4) Proper surpluses and reserves shall be kept for the fund. The board of investments shall invest the moneys of the fund. The cost of administration of the fund shall be paid out of the money in the fund.

(5) All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3.

(6) When the division discovers an uninsured employer it shall order him to cease operations until he has elected to be bound by a compensation plan. An employer who does not comply with the division's order to cease operations is guilty of a misdemeanor.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977.

92-213. Election of uninsured employee to take under the fund or bring action against employer—limitation on benefit entitlement under the fund. (1) An employee who suffers an injury arising out of and

in the course of employment while working for an uninsured employer as defined in 92-212(1), or an employee's beneficiaries in injuries resulting in death, may elect to either receive benefits from the uninsured employers fund or pursue a damage action against the employer. However, once an election has been made to either take from the fund or pursue a damage action, the election is final and binding on the employee or the employee's beneficiaries, heirs, and personal representatives. An injured employee or the employee's beneficiaries may not receive both benefits from the fund and pursue a damage action. If an injured employee or the employee's beneficiaries elect to bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(a) employee was negligent unless such negligence was willful;

(b) injury was caused by the negligence of a fellow employee; or

(c) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

(2) Notwithstanding the provisions of 92-212 and 92-614, injured employees or an employee's beneficiaries who elect to receive benefits from the uninsured employers fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund shall be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977.

92-214. Effective date of uninsured employers' fund. Except as provided in this section, 92-212 is effective on July 1, 1977. Payouts for benefits may not be made from the uninsured employers' fund until the fund attains a level of $150,000 or January 1, 1979, whichever occurs first. However, until payouts for benefits from the uninsured employers' fund begin, an uninsured employer, as defined in 92-212(1), is subject to suit by an employee who suffers an injury arising out of and in the course of employment. In any such action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense that the:

(1) employee was negligent unless such negligence was willful;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonable safe tools or appliances.

History: En. 92-214 by Sec. 6, Ch. 550, L. 1977.

CHAPTER 3—HAZARDOUS OCCUPATIONS TO WHICH ACT APPLIES

(Repealed—Section 6, Chapter 443, Laws of 1973)

92-301 to 92-306. (2847 to 2852) Repealed.

Repeal

Sections 92-301 to 92-306 (Secs. 4, 5, Ch. 96, L. 1915; Sec. 2, Ch. 100, L. 1919; Sec. 1, Ch. 117, L. 1925; Secs. 1, 2, Ch. 88, L. 1945), defining the hazardous occupations covered by workmen's compensation, were repealed by Sec. 6, Ch. 443, Laws 1973. For new law, see sec. 92-207.1.

CHAPTER 4—MEANING OF WORDS EMPLOYED IN ACT

Section 92-410.1. Employer defined.
92-411. Employee and workman defined.
92-413. Beneficiary defined.
92-417. Child defined, to include whom.
92-418. Injury or injured defined.
92-418.1. Heart and lung disease of others not excluded by provisions relating to firefighters.
92-423.1. Wages defined.
92-423.2. Average weekly wage defined.
92-425. Husband or widower defined.
92-426. Division defined.
92-429. Order defined.
92-432. Payroll defined—estimate to establish payroll.
92-435. Insurer defined.
92-438.1. Independent contractor defined.
92-439. Temporary total disability defined.
92-440. Permanent partial disability defined.
92-441. Permanent total disability defined.

92-402 to 92-407. (2854 to 2859) Repealed.

Repeal

Sections 92-402 to 92-407 (Sec. 6, Ch. 96, L. 1915), defining various types of "hazardous employment," were repealed by Sec. 6, Ch. 443, Laws 1973.

92-410. (2862) Repealed.

Repeal

Section 92-410 (Sec. 6, Ch. 96, L. 1915; Sec. 2, Ch. 121, L. 1925; Sec. 1, Ch. 50, L. 1965), defining "employer," was repealed by Sec. 2, Ch. 154, Laws 1973. For new law, see sec. 92-410.1.

92-410.1. Employer defined. "Employer" means the state and each county, city and county, city school district, irrigation district, all other districts established by law and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof.

Any employer who contracts to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation or profession of such employer shall be liable for the payment of compensation to the employees of any subcontractor unless the subcontractor primarily liable for the payment of such compensation has coverage under this act. Any employers who shall become liable for such

compensation may recover the amount of benefits paid and necessary expenses from the subcontractor primarily liable therein.

History: En. 92-410.1 by Sec. 1, Ch. 154, L. 1973.

Title of Act

An act providing for a definition of "employer" and providing comprehensive coverage extending to subcontractors in the Workmen's Compensation Act, title 92, R. C. M. 1947; and repealing section 92-410, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 154, Laws 1973 read "Section 92-410, R. C. M. 1947, is repealed."

DECISIONS UNDER FORMER LAW

Employer

Where ultimate control of all details of work performed by plaintiff was in Yellowstone Pine, and plaintiff was supervised by another employee of same company, control over plaintiff was in Yellowstone Pine, and therefore plaintiff was employee of Yellowstone Pine, receiving benefits from workmen's compensation, and could not pursue common-law action against his employer. State ex rel. Ferguson v. District Court, — M —, 519 P 2d 151.

Joint Ventures

Individual members of joint venture are "employers" within meaning of act and as such are immune from tort actions for death of employees of joint venture. Hamman v. United States, 267 F Supp 420.

Transfer of Company Operation

Where milling company transferred its trucking facilities to a different location where they were operated on a break-even basis under supervision of assistant to the president of the company in order to avoid inclusion of truck drivers in union bargaining unit with rest of its employees, truck driver's employment had not been transferred so as to entitle him to bring common-law negligence action against the trucking operation as a separate employer since control remained in the company which supervised activities of its presidential assistant. State ex rel. Ferguson v. District Court, Eighteenth Judicial Dist., Gallatin County, — M —, 519 P 2d 151.

92-411. (2863) **Employee and workman defined.** (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an "independent contractor" who is in the service of an employer as defined by the preceding section, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 92-436 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 92-202.1(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 71-307, and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment

from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college; or

(d) students enrolled and in attendance in programs of vocational technical education approved by the state board of public education at designated postsecondary vocational technical centers.

(2) If the employer is a partnership, or sole proprietorship, such employer may elect to include as an "employee" within the provisions of this act, any member of such partnership, or the owner of the sole proprietorship, devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered, and no partner or sole proprietor shall be deemed an employee within this act until such notice has been given. For premium rate making, and for the determination of weekly wage for weekly compensation benefits, the insurance carrier shall assume a salary or wage of such electing "employee" to be $900 per month.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2863, R. C. M. 1921; amd. Sec. 3, Ch. 121, L. 1925; amd. Sec. 1, Ch. 139, L. 1931; amd. Sec. 3, Ch. 88, L. 1945; amd. Sec. 1, Ch. 153, L. 1963; amd. Sec. 1, Ch. 308, L. 1971; amd. Sec. 1, Ch. 44, L. 1975; amd. Sec. 1, Ch. 281, L. 1977.

Amendments

The 1971 amendment added the language following "section 71-307" in the second paragraph; and added the third paragraph.

The 1975 amendment divided the section into subsections; substituted "division" for "industrial accident board" in subsection (3); inserted in the last sentence of subsection (3) "and for the determination of weekly wage for weekly compensation benefits"; increased the monthly amount specified at the end of subsection (3) from $500 to $900; and made minor changes in phraseology.

The 1977 amendment inserted "worker" in the introductory phrase of subsection (1); inserted the subdivision (1)(a) designation; substituted the last two sentences of subdivision (1)(a) for "including city and town firemen, highway patrolmen, police officers, county sheriffs, deputy sheriffs, constables, truant officers and all peace officers, also all public officers and their deputies, assistants and employees, but excluding any person whose employment is both casual and not in the courses of the trade, business, profession or occupation of his employer, unless such employer has elected to be bound by the provisions of the compensation law, in which case all employees are included, whether their employment is casual or otherwise, and also excluding any employee engaged in household or domestic service; redesignated former subsection (2) as subdivisions (1)(b) and (1)(c); added the last sentence to subdivision (1)(c); inserted subdivision (1)(d); redesignated former subsection (3) as subsection (2); substituted "insurer" for "insurance carrier and the division" in the second sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 308, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Airport Employee

Plaintiff under a contract of employment with the city-county airport was not an "actual" employee of the state of Montana under the accepted definitions. Kelleher v. State, 160 M 365, 503 P. 2d 29.

Employer

Where ultimate control of all details of work performed by plaintiff was in Yellowstone Pine, and plaintiff was supervised by another employee of same company, control over plaintiff was in Yellowstone Pine, and therefore plaintiff was employee of Yellowstone Pine, receiving benefits from workmen's compensation, and could not pursue common-law action against his employer. State ex rel. Ferguson v. District Court, — M —, 519 P 2d 151.

Gratuitous Services

Where claimant's deceased, who was the friend of a bulk oil plant operator and was making deliveries for him at a compensation of 1¢ per gallon delivered during the latter's absence on active duty in

the army reserve, was severely burned while loading a gasoline truck, from which injury he subsequently died, his services were not gratuitous, and there was evidence to sustain a finding that decedent was defendant's employee within the meaning of the act. Kimball v. Continental Oil Co., — M —, 550 P 2d 912.

92-413. (2865) **Beneficiary defined.** "Beneficiary" means:

(1) a surviving wife or husband;

(2) an unmarried child under the age of eighteen (18) years;

(3) an unmarried child under the age of twenty-five (25) years who is a full-time student in an accredited school;

(4) an invalid child over the age of eighteen (18) years who is dependent upon the decedent for support at the time of injury;

(5) a parent who is dependent upon the decedent for support at the time of the injury. However, such a parent is a beneficiary only when no beneficiary, as defined in subsections (1) through (4) of this section, exists; and

(6) a brother or sister under the age of eighteen (18) years if dependent upon the decedent for support at the time of the injury. However, such a brother or sister is a beneficiary only until the age of eighteen (18) years and only when no beneficiary, as defined in subsections (1) through (5) of this section, exists.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2865, R. C. M. 1921; amd. Sec. 4, Ch. 121, L. 1925; amd. Sec. 1, Ch. 92, L. 1969; amd. Sec. 1, Ch. 331, L. 1973; amd. Sec. 1, Ch. 269, L. 1974; amd. Sec. 1, Ch. 46, L. 1975.

Amendments

The 1969 amendment inserted ", or an unmarried child * * * accredited school" after "under the age of eighteen years."

The 1973 amendment inserted "unmarried" in the first clause relating to children; increased the maximum age for student beneficiaries from twenty-one to twenty-two years; deleted "or if no surviving wife or husband then a surviving child or children under the age of eighteen years and an invalid child or invalid children over the age of eighteen years" immediately before the proviso; and made minor clarifying changes in punctuation.

The 1974 amendment rewrote this section which read: "'Beneficiary' means and shall include a surviving wife or husband; an unmarried surviving child or children under the age of eighteen (18) years; or an unmarried child under the age of twenty-two (22) years who is a full-time student in an accredited school; an invalid child or invalid children over the age of eighteen (18) years; provided, however, that no invalid child over the age of eighteen (18) years shall be considered a beneficiary unless dependent upon the decedent for support at the time of injury."

The 1975 amendment increased the maximum age for student beneficiaries in subdivision (3) from twenty-two to twenty-five years.

92-414, 92-415. (2866, 2867) **Repealed.**

Repeal

Sections 92-414, 92-415 (Sec. 6, Ch. 96, L. 1915; Secs. 5, 6, Ch. 121, L. 1925; Sec. 1, Ch. 58, L. 1935), defining "major dependent" and "minor dependent," were repealed by Sec. 88, Ch. 23, Laws 1975.

92-417. (2869) **Child defined, to include whom.** "Child" shall include a posthumous child, a dependent stepchild, a child legally adopted prior to the injury, an illegitimate child legitimized prior to the injury.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2869, R. C. M. 1921; amd. Sec. 2, Ch. 92, L. 1969.

Amendments

The 1969 amendment inserted "dependent" before "stepchild."

92-418. (2870) **Injury or injured defined.** "Injury" or "injured" means:

(1) a tangible happening of a traumatic nature from an unexpected cause, or unusual strain, resulting in either external or internal physical harm, and such physical condition as a result therefrom and excluding disease not traceable to injury, except as provided in subsection 2 of this section.

(2) cardiovascular or pulmonary or respiratory diseases contracted by a paid firefighter employed by a municipality, village or fire district as a regular member of a lawfully established fire department, which diseases are caused by over-exertion in times of stress or danger in the course of his employment by proximate exposure or by cumulative exposure over a period of four (4) years or more to heat, smoke, chemical fumes, or other toxic gases.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2870, R. C. M. 1921; amd. Sec. 6, Ch. 162, L. 1961; amd. Sec. 6, Ch. 149, L. 1965; amd. Sec. 1, Ch. 270, L. 1967; amd. Sec. 1, Ch. 488, L. 1973.

Amendments

The 1965 amendment made no apparent change. But see Lupien v. Montana Record Publishing Co., 143 M 415, 390 P 2d 455, 457.

The 1967 amendment inserted "or unusual strain" after "an unexpected cause."

The 1973 amendment divided the former language into the preliminary clause and subsection (1); added "except as provided in subsection 2 of this section" to the end of subsection (1); and added subsection (2).

Repealing Clause

Section 2 of Ch. 270, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 270, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

Aggravation of Pre-existing Condition

Four-year-old back injury aggravated by lifting heavy piece of material on job was not injury within purview of statute since claimant must establish that injury for which he seeks to recover is new injury resulting from unexpected cause. Phelan v. Vogel, 148 M 422, 422 P 2d 80.

Aneurysm

Workman who suffered aneurysm when right middle cerebral artery ruptured did not suffer compensable injury as defined in statute in light of evidence that at time of injury, he was engaged in performing ordinary activities of employment which would not cause aneurysm. Miller v. Sundance Recreation, Inc., 151 M 223, 441 P 2d 194.

Burden of Proof

Claimant who injured hand and received compensation for such injury was properly denied compensation for alleged "disabling cardiac damage" and "cardiac neurosis" since claimant could produce no substantial evidence to support such claim. Verdi v. American Smelting & Refining Co., 154 M 208, 461 P 2d 845.

Heart Attack

Where employee suffered fatal myocardial infarction at work but expert cardiologist testified that the attack was not a result of his employment, recovery was denied even though absolute proof was not possible. Ness v. Diamond Asphalt Co., 143 M 560, 393 P 2d 43.

Where claimant, supervisor of mill, opened mill on unusually cold day and suffered myocardial infarction while performing his usual duties, there was no proof that myocardial infarction had any causal connection to claimant's employment, and workmen's compensation was denied. Hurlbut v. Vollstedt Kerr Co., — M —, 538 P 2d 344.

Nervous Breakdown

Where employee, who performed unpopular work for his employer and was subject to taunts and threats from coworkers, suffered a nervous breakdown and resulting schizophrenia, there was no compensable injury under this section, since examining physician could not say for certain whether the employee's job created an "unusual strain" leading to the breakdown, and the record as a whole did not indicate that he was entitled to compensation. Erhart v. Great Western Sugar Co., — M —, 546 P 2d 1055.

Relationship between Accident and Disability

Evidence of claimant's mental problems existing prior to accident and doctor's testimony that it was speculation that claimant's failure to return to work was caused by accident was sufficient to sustain judgment denying recovery under statute for claimant's failure to establish direct relationship between industrial accident and physical condition after such accident. Schwartzkopf v. Industrial Accident Board, 149 M 488, 428 P 2d 468.

Claimant's disability resulting from arteriosclerosis obliterans was the result of a disease not traceable to injury, and was not a compensable injury within the meaning of this section. McAndrews v. Schwartz, — M —, 523 P 2d 1379.

Spinal Cancer

Workmen's compensation was properly denied where claimant's decedent's death resulted from a spinal cancer that was neither caused by nor contributed to by accident in which decedent fractured his dorsal spine, there being no causal connection between the fracture and the cancerous tumor of the spine which caused death. Stordahl v. Rush Implement Co., 148 M 13, 417 P 2d 95, 98. (Dissenting opinion, 148 M 13, 417 P 2d 95, 99.)

Unusual Strain

Evidence that claimant, while in course and scope of employment, picked up heavy tray of dirty dishes from floor and suffered back strain and testimony of doctor that subsequent back condition resulted from unusual strain was sufficient to support claim of accidental injury within meaning of phrase "unusual strain" as used in statute. Jones v. Bair's Cafes, 152 M 13, 445 P 2d 923, explained in 157 M 328, 331, 485 P 2d 692.

Back injury consisting of a herniated disc, sustained when employee lifted mop pail full of water, resulted from a compensable "unusual strain" within meaning of this section. Robins v. Ogle, 157 M 328, 485 P 2d 692.

Claimant's testimony supporting two specific injuries, the first of which occurred while trying to lift a part of a meat grinder from a low sink and the second of which occurred one and one half month later while attempting to lift a fifty pound casing on a meat saw, coupled with evidence of a herniated disc which required surgery, constituted sufficient evidence of an unusual strain caused by a tangible happening of a traumatic nature. Love v. Ralph's Food Store, Inc. — M —, 516 P 2d 598.

Where employee seeks compensation for an injury resulting from an "unusual strain," he must show (1) a strain which was unusual either in cause or effect, and (2) that the strain resulted from a tangible happening of a traumatic nature. Erhart v. Great Western Sugar Co., — M —, 546 P 2d 1055.

DECISIONS UNDER FORMER LAW

Disease Not Traceable to Injury

Where claimant was being treated for bursitis prior to time she lifted box which allegedly caused injury to her shoulder, and surgeon who had operated on shoulder admitted only to the "possibility" of a supraspinatus tendon tear, there was insufficient evidence upon which either the industrial accident board or district court could base award. La Forest v. Safeway Stores, Inc., 147 M 431, 414 P 2d 200.

Unexpected Cause

Claimant, whose routine job was lifting fifteen-pound blocks, was not entitled to compensation for back injury since strain from lifting blocks was not an injury resulting from an "unexpected cause." James v. V. K. V. Lumber Co., 145 M 466, 401 P 2d 282, distinguished in Jones v. Bair's Cafes, 152 M 13, 445 P 2d 923.

92-418.1. **Heart and lung disease of others not excluded by provisions relating to firefighters.** Nothing herein shall be construed to exclude any other working person who suffers a cardiovascular, pulmonary or respiratory disease while in the course and scope of his employment.

History: En. Sec. 2, Ch. 488, L. 1973.

Title of Act

An act relating to the Workmen's Compensation Act; amending section 92-418, R. C. M. 1947, relating to the definition of "injury" or "injured" to provide for broadened coverage for firemen; and providing for an effective date.

Effective Date

Section 3 of Ch. 488, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 27, 1973.

92-419, 92-420. (2872, 2873) **Repealed.**

Repeal

Sections 92-419, 92-420 (Sec. 6, Ch. 96, L. 1915), relating to the meaning of singular and plural terms, and of masculine, feminine, or neuter gender, were repealed by Sec. 88, Ch. 23, Laws 1975.

92-422. (2874) **Repealed.**

Repeal

Section 92-422 (Sec. 6, Ch. 96, L. 1915; Sec. 1, Ch. 175, L. 1971), defining the work week, was repealed by Sec. 2, Ch. 445, Laws 1973.

92-423. (2875) **Repealed.**

Repeal

Section 92-423 (Sec. 6, Ch. 96, L. 1915), defining wages, was repealed by Sec. 2, Ch. 444, Laws 1973. For new law, see sec. 92-423.1.

92-423.1. Wages defined. "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week and overtime is not to be considered.

Sick leave benefits accrued by employees of "public corporations" as defined by section 92-434 are considered "wages."

History: En. 92-423.1 by Sec. 1, Ch. 444, L. 1973.

Title of Act

An act providing for a definition of "wages" in the Workmen's Compensation Act; and repealing section 92-423, R. C. M. 1947.

Repealing Clause

Section 2 of ch. 444, Laws 1973 read "Section 92-423, R. C. M. 1947, is repealed."

92-423.2. Average weekly wage defined. "Average weekly wage" means the mean weekly earnings of all employees under covered employment as defined and established annually by the division of employment security of the Montana department of labor and industry. It is established at the nearest whole dollar ($1) number and shall be adopted by the division of workmen's compensation prior to July 1 of each year.

History: En. 92-423.2 by Sec. 1, Ch. 445, L. 1973.

Title of Act

An act providing for a definition of "average weekly wage" in the Workmen's Compensation Act; and repealing section 94-422, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 445, Laws 1973 read "Section 92-422, R. C. M. 1947, is repealed."

92-425. (2877) **Husband or widower defined.** "Husband" or "widower" means only a husband or widower living with, or legally entitled to be supported by the deceased at the time of her injury.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2877, R. C. M. 1921; amd. Sec. 1, Ch. 33, L. 1974.

Amendments

The 1974 amendment deleted "incapable of supporting himself, and" after "widower" and before "living with."

92-426. (2878) **Division defined.** "Division" means the division of workers' compensation of the department of labor and industry provided for in section 82A-1004, R. C. M. 1947.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2878, R. C. M. 1921; amd. Sec. 7, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted the present section for "'Board' means the industrial accident board of the state of Montana."

92-427, 92-428. (2879, 2880) **Repealed.**

Repeal

Sections 92-427, 92-428 (Sec. 6, Ch. 96, L. 1915), defining "commissioner" and "appointed member of the board," were repealed by Sec. 88, Ch. 23, Laws 1975.

92-429. (2881) **Order defined.** "Order" means any decision, rule, regulation, direction, requirement, or standard of the division, or any other determination arrived at or decision made by the division.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2881, R. C. M. 1921; amd. Sec. 8, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board'" throughout the section; deleted "excepting general or local orders as herein specified" at the end of the section; and made minor changes in phraseology.

92-430, 92-431. (2882, 2883) **Repealed.**

Repeal

Sections 92-430, 92-431 (Sec. 6, Ch. 96, L. 1915), defining "general order" and "local order," were repealed by Sec. 88, Ch. 23, Laws 1975.

92-432. (2884) **Payroll defined—estimate to establish payroll.** "Payroll," "annual payroll" or "annual payroll for the preceding year," means the average annual payroll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any length of time during such calendar year, twelve times the average monthly payroll for the current year; provided, that an estimate may be made by the division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be on December 31st of such current year.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2884, R. C. M. 1921; amd. Sec. 9, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section.

92-435. (2887) **Insurer defined.** "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in 92-212.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2887, R. C. M. 1921; amd. Sec. 1, Ch. 151, L. 1973; amd. Sec. 7, Ch. 550, L. 1977.

Amendments

The 1973 amendment added "and includes industrial insurance account created by this act, known as the 'state fund'."

The 1977 amendment substituted the present definition for "any insurance company authorized to transact business in this state insuring any employer under this act and includes industrial insurance account created by this act, known as the 'state fund'."

"Any Employer"

The use of the word "insurer" in section 92-616 and throughout the remainder of this act should be construed as referring to insurers "under any plan," which includes employers who are their own insurers under Plan I. McMillen v. Arthur G. McKee & Co., — M —, 533 P 2d 1095.

92-438. (2890) Repealed.

Repeal

Section 92-438 (Sec. 6, Ch. 96, L. 1915; Sec. 1, Ch. 49, L. 1965), defining "independent contractor," was repealed by Sec. 2, Ch. 251, Laws 1973. For new law, see sec. 92-438.1.

92-438.1. Independent contractor defined. An "independent contractor" is one who renders service in the course of an occupation and:

(1) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(2) is engaged in an independently established trade, occupation, profession or business.

History: En. 92-438.1 by Sec. 1, Ch. 251, L. 1973.

Title of Act

An act providing for a definition of "independent contractor" in the Workmen's Compensation Act; and repealing section 92-438, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 251, Laws 1973 read "Section 92-438, R. C. M. 1947, is repealed."

DECISIONS UNDER FORMER LAW

General Contractor's Liability

Where injured employee's immediate employer was independent contractor and was required by general employer to carry workmen's compensation insurance under which injured employee received compensation, general employer was immune under former section 92-438 from common-law liability. Ashcraft v. Montana Power Co., 156 M 368, 480 P 2d 812.

Bank which required independent contractor to provide workmen's compensation coverage against the claims of employees of a subcontractor was immune from suit by employee of subcontractor to recover damages suffered, allegedly due to bank's negligence. State ex rel. First Nat. Bank & Trust Co. v. District Court, — M —, 505 P 2d 408.

General employer was immune from suit by independent contractor's employee for injuries sustained in performing work on the general employer's electrical lines where contractor provided workmen's compensation coverage although general employer did not require it to do so in the contract. Fiscus v. Beartooth Electric, — M —, 522 P 2d 87.

Where independent contractor defense is not applicable to general employer, general employer is substituted for immediate employer and is liable under Workmen's Compensation Act, so that claimant cannot maintain common-law personal injury action against general employer. Campbell v. Shell Oil Co., 329 F Supp 846.

92-439. Temporary total disability defined. "Temporary total disability" means a condition resulting from an injury as defined in this act that results in total loss of wages and exists until the injured workman is as far restored as the permanent character of the injuries will permit.

History: En. 92-439 by Sec. 1, Ch. 107, L. 1973.

Title of Act

An act providing for a definition of "temporary total disability" in the Workmen's Compensation Act.

92-440. Permanent partial disability defined. "Permanent partial disability" means a condition resulting from injury as defined in this act

that results in the actual loss of earnings or earning capability less than total that exists after the injured workman is as far restored as the permanent character of the injuries will permit.

History: En. 92-440 by Sec. 1, Ch. 108, L. 1973.

Title of Act

An act providing for a definition of "permanent partial disability" in the Workmen's Compensation Act.

92-441. Permanent total disability defined. "Permanent total disability" means a condition resulting from injury as defined in this act that results in the loss of actual earnings or earning capability that exists after the injured workman is as far restored as the permanent character of the injuries will permit and which results in the workman having no reasonable prospect of finding regular employment of any kind in the normal labor market.

History: En. 92-441 by Sec. 1, Ch. 109, L. 1973.

Title of Act

An act providing for a definition of "permanent total disability" in the Workmen's Compensation Act.

CHAPTER 5—COMPENSATION TO CERTAIN HEIRS AND BENEFICIARIES

Section 92-502. When compensation to beneficiaries or widow ceases.
92-506. No compensation to nonresident beneficiaries until when.
92-507. Payment to nonresident beneficiaries made to whom.
92-508. Compensation paid to parent or guardian.

92-501. (2891) Repealed.

Repeal

Section 92-501 (Sec. 7, Ch. 96, L. 1915; Sec. 7, Ch. 121, L. 1925; Sec. 1, Ch. 53, L. 1937), relating to eligibility as beneficiaries of children, brothers and sisters, was repealed by Sec. 1, Ch. 106, Laws 1973.

92-502. (2892) When compensation to beneficiaries or widow ceases. If any beneficiaries of a deceased employee die, or if the widow or widower remarry, the right of such beneficiary or widow or widower to compensation under this act shall cease.

History: En. Sec. 7, Ch. 96, L. 1915; re-en. Sec. 2892, R. C. M. 1921; amd. Sec. 10, Ch. 23, L. 1975.

Amendments

The 1975 amendment deleted references to major or minor dependents after both references to beneficiaries; and made a minor change in phraseology.

92-503 to 92-505. (2893 to 2895) Repealed.

Repeal

Sections 92-503 to 92-505 (Sec. 8, Ch. 96, L. 1915), relating to eligibility as beneficiaries of persons residing outside the United States, were repealed by Sec. 1, Ch. 106, Laws 1973.

92-506. (2896) No compensation to nonresident beneficiaries until when. Before payment of compensation to a beneficiary not residing within the United States, satisfactory proof of such relationship as to constitute a beneficiary under this act shall be furnished by such beneficiary, duly authenticated under seal of an officer of a court of law in the country

where such beneficiary resides, at such times and in such manner as may be required by the division. And such proof shall be conclusive as to the identity of such beneficiary, and any other claim of any other person to any such compensation shall be barred from and after the filing of such proof.

History: En. Sec. 8, Ch. 96, L. 1915; re-en. Sec. 2896, R. C. M. 1921; amd. Sec. 11, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" at the end of the first sentence.

92-507. (2897) **Payment to nonresident beneficiaries made to whom.** Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary, or consul, or consular agent within the United States, representing the country in which such nonresident beneficiary resides, and the written receipt of such plenipotentiary, or consul, or consular agent shall acquit the employer, the insurer, or the division, as the case may be.

History: En. Sec. 9, Ch. 96, L. 1915; re-en. Sec. 2897, R. C. M. 1921; amd. Sec. 12, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" near the end of the section.

92-508. (2898) **Compensation paid to parent or guardian.** Where payment is due to a child under eighteen (18) years of age or to a person adjudged incompetent, the same shall be made to the parent or to the duly appointed guardian, as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer or division, as the case may be, of further liability. In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative.

History: En. Sec. 9, Ch. 96, L. 1915; re-en. Sec. 2898, R. C. M. 1921; amd. Sec. 8, Ch. 121, L. 1925; amd. Sec. 13, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" near the end of the first sentence; and made a minor change in style.

CHAPTER 6—CLAIMS—LIABILITY FOR INJURY UNDER DIFFERENT PLANS OF ACT

Section 92-601. Claims must be presented within what time.
92-607. Work to be paid for in property other than money—wages.
92-608. Compensation in case of death of employee—determination of beneficiary, etc.
92-609. Examination of employee by physician—request or order for—physician may testify.
92-614. Who liable for injuries under the act and in what amounts—extraterritorial application and reciprocity.
92-615. Notice of denial of claim by insurer.
92-616. Costs and attorneys' fees payable on denial of claim later found compensable.
92-617. Payments by insurer prior to a hearing—reimbursement.
92-618. Payment by employer or insurer of fees for claimant's legal services and witnesses.
92-619. Attorney's fees.

92-601. (2899) **Claims must be presented within what time.** In case of personal injury or death, all claims shall be forever barred unless presented in writing to the employer, the insurer, or the division, as the case

may be, within twelve (12) months from the date of the happening of the accident, either by the claimant or someone legally authorized to act for him in his behalf.

The division may, upon a reasonable showing by the claimant of lack of knowledge of disability, waive the time requirement, up to an additional twenty-four (24) months.

History: En. Sec. 10, Ch. 96, L. 1915; amd. Sec. 3, Ch. 100, L. 1919; re-en. Sec. 2899, R. C. M. 1921; amd. Sec. 1, Ch. 34, L. 1935; amd. Sec. 1, Ch. 264, L. 1973.

Amendments

The 1973 amendment deleted "under oath" following "in writing" in the first paragraph; substituted "division" for "board"; added the second paragraph; and made a minor change in style.

Estoppel to Invoke Statute

Industrial accident board's dismissal of claimant's workmen's compensation claim was proper where action was not commenced until twenty-three months after expiration of limitation period provided for in this section, and claimant failed to produce evidence which would indicate existence of latent injury or actions which would estop employer from invoking statute of limitations. Vetsch v. Helena Transfer & Storage Co., 154 M 106, 460 P 2d 757.

Since the burden is on claimant to file a claim and not on the insurer to solicit claims, insurer which deviated from its standard procedure by failing to send claimant a letter advising him to file a claim within one year and by neglecting to file the medical report with the board for several years was not estopped from relying on the statute of limitations where claimant was never misled by anyone connected with the insurer or the industrial accident board; any mistake in understanding of the law made by attorney who represented both claimant and employer in suit against third-party tort-feasor established no basis for estoppel where attorney had no knowledge of any mistake on his part and no intent to mislead claimant. Ricks v. Teslow Consol., — M —, 512 P 2d 1304.

Failure of employer to file an injury report or to inform claimant that a workmen's compensation claim must be filed within one year does not constitute equitable estoppel if the employee has not alleged any injury or need for medical attention. Bagley v. Hotel Florence Co., — M —, 526 P 2d 1372.

Multiple Claims

Claimant who filed a claim for compensation on January 16, 1969, covering an injury on August 26, 1968, was not barred from asserting claim to compensation arising from injury on July 12, 1968 where the two injuries were closely related and where the employer and his insurer had actual knowledge of the claim long before one year had elapsed following the alleged injury. Love v. Ralph's Food Store, Inc., — M —, 516 P 2d 598.

Refusal to Give Notice

Where plaintiff suffered compensable injury but failed to fill out Form 54 for workmen's compensation after three warnings that he had to fill it out in order to receive benefits, division's refusal to grant benefits was correct, in light of 92-601, before the 1973 amendment. Klein v. Independent Wholesale Associated Grocers, — M —, 538 P 2d 1358.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698; Meyer v. Noble Drilling, Inc., 259 F Supp 110, 112.

92-604. (2901) **Employer liable when lets work, etc.**

Common-Law Remedy

Where independent contractor defense is not applicable to general employer, general employer is substituted for immediate employer of claimant and is liable under Workmen's Compensation Act, so that claimant cannot maintain common-law personal injury action against general employer. Campbell v. Shell Oil Co., 329 F Supp 846.

Independent Contractor's Coverage

Bank which required independent contractor to provide workmen's compensation coverage against the claims of employees of a subcontractor was immune from suit by employee of subcontractor to recover damages suffered, allegedly due to bank's negligence. State ex rel. First Nat. Bank & Trust Co. v. District Court, 161 M 127, 505 P 2d 408.

92-607. (2904) **Work to be paid for in property other than money—wages.** Where any employer procures any work to be done, payment for

which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, the wages of the employees receiving such compensation shall be determined by the division in accordance with the going wage for the same or similar work in the district or locality where the same is to be performed. However, where an employer procures any work to be done by any contractor, or through him by a subcontractor, the payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, then and in that event, the employer shall not be liable for compensation, but such liability shall fall upon the contractor or subcontractor, as the case may be.

History: En. Sec. 11, Ch. 96, L. 1915; re-en. Sec. 2904, R. C. M. 1921; amd. Sec. 14, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board"; and made minor changes in phraseology and punctuation.

92-608. (2905) Compensation in case of death of employee—determination of beneficiary, etc. (1) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased, as the case may be, shall receive the same compensation as though the death occurred immediately following the injury, but the period during which the death benefit shall be paid shall be reduced by the period during or for which compensation was paid for the injury.

(2) If the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death.

(3) The question as to who constitutes a beneficiary shall be determined as of the date of the happening of the accident to the employee, whether death shall immediately result therefrom or not.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R. C. M. 1921; amd. Sec. 15, Ch. 23, L. 1975.

Amendments

The 1975 amendment inserted the subsection designations; and deleted references to major or minor dependents after "beneficiary" in subsections (1) and (3).

Death from Cause other than Injury

Clause providing that "if the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death" means that if employee is receiving compensation as result of industrial injury and subsequently dies from causes other than injury, liability for further compensation by way of death benefits or continuing disability benefits is cut off; but statute does not terminate liability for compensation accrued prior to death and unpaid at time of death; thus, compensation for permanent partial disability existing between time of injury and time of death is payable even after death. Breen v. Industrial Accident Board, 150 M 463, 436 P 2d 701.

"Proximate Cause" Defined

"Proximate cause" as used in statute, means that cause which in natural and continuous sequence, unbroken by any new and independent cause produces death, without which it would not have occurred; it does not mean that injury must be sole cause of death but that injury must be substantial contributing cause in sense that death would not have occurred but for injuries. Head injury received in compensable industrial accident occurring more than two years previous to death was not proximate cause of death in view of evidence that deceased drank to excess before and after accident, that immediate cause of death was suffocation from vomit after drinking bout and that even if deceased had taken six nembutal tablets given on prescription of doctor to relieve headaches, it could not have caused or contributed to death. Breen v. Industrial Accident Board, 150 M 463, 436 P 2d 701.

92-609. (2906) **Examination of employee by physician—request or order for—physician may testify.** (1) Whenever in case of injury the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer or the insurer, submit from time to time to examination by a physician, who shall be provided and paid for by such employer or insurer, and shall likewise submit to examination from time to time by any physician selected by the division, or any member or examiner, or referee thereof.

(2) The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employee, after such written request, shall fail or refuse to submit to such examination, or shall in any way obstruct the same, his right to compensation shall be suspended. Any physician employed by the employer, the insurer, or the division, who shall make or be present at any such examination, may be required to testify as to the results thereof.

History: En. Sec. 13, Ch. 96, L. 1915; re-en. Sec. 2906, R. C. M. 1921; amd. Sec. 16, Ch. 23, L. 1975.

Amendments

The 1975 amendment inserted the subsection designations; and substituted "division" for "board" near the end of each subsection.

Absent Witness

It was improper for workmen's compensation hearing examiner, when confronted with conflicting medical testimony, to seek the opinion of an independent physician who was not a witness at the hearing without granting claimant an opportunity to cross-examine and rebut his findings. Rumsey v. Cardinal Petroleum, — M —, 530 P 2d 433.

92-610. (2907) **Repealed.**

Repeal

Section 92-610 (Sec. 14, Ch. 96, L. 1915; Sec. 1, Ch. 177, L. 1929), relating to contracts for hospital benefits, was repealed by Sec. 1, Ch. 106, Laws 1973.

92-611, 92-612. (2908, 2909) **Repealed.**

Repeal

Sections 92-611, 92-612 (Sec. 14, Ch. 96, L. 1915; Sec. 6, Ch. 235, L. 1947), relating to supervision of the hospital by the industrial accident board, and liability for treatment or malpractice, were repealed by Sec. 88, Ch. 23, Laws 1975.

92-614. (2911) **Who liable for injuries under the act and in what amounts—extraterritorial application and reciprocity.** (1) Every insurer is liable for the payment of compensation in the manner and to the extent hereinafter provided to an employee of an employer it insures who receives an injury arising out of and in the course of his employment or, in the case of his death from such injury, to his beneficiaries, if any.

(2) If a worker employed in this state who is subject to the provisions of this act temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this act shall apply to such worker as though he were injured within this state.

(3) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this act shall not apply to them:

(a) if the employer and employee are bound by the provisions of the Workers' Compensation Law or similar law of such other state which applies to them while they are in the state of Montana, and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(4) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the Workers' Compensation Law of the certifying state.

(5) The division may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this act to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R. C. M. 1921; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977.

Amendments

The 1967 amendment inserted figures after the written numbers in the first paragraph; and added everything after the first paragraph.

The 1975 amendment inserted the subsection designations; deleted "or, if none, to his major dependents, if any; or, if none, to his minor dependents, if any" at the end of subsection (1); substituted "worker" for "workman" throughout the section; substituted "Workers'" for "Workmen's" throughout the section; substituted "division" in subsection (5) for "industrial accident board"; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "every insurer" at the beginning of subsection (1) for a detailed description of employers, insurers, and the industrial accident fund which constitute insurers under the act; substituted "employee of an employer it insures who receives an injury" in subsection (1) for "employee who has elected to come under this act, and who shall receive an injury"; and made a minor change in punctuation.

Repealing Clause

Section 9 of Ch. 550, Laws 1977 read "Sections 92-201, 92-203, 92-205, 92-207.1, 92-209, 92-210, 92-211, and 92-1102, R. C. M. 1947, are repealed."

Hourly Wages

Payment of hourly wages is not necessarily a universal condition precedent in determining compensability of injury, and where union contract expressly provided for travel allowance and the allowance was for the benefit of the employer, injuries to employees who were traveling to work arose out of and in the course of their employment. McMillen v. Arthur G. McKee & Co., — M —, 533 P 2d 1095.

Travel Allowance

Non-union employee who received travel allowance under terms of union contract was entitled to workmen's compensation benefits for injuries due to automobile accident while driving to work, even though the travel allowance was a per diem sum not based on the mileage driven. Ellingson v. Crick Co., — M —, 533 P 2d 1100.

Travel allowance paid by employer was an incentive to get men to come on the job; and accordingly, employees who were injured in single car accident on their way to work were injured in the course of their employment, and were entitled to workmen's compensation benefits. McMillen v. Arthur G. McKee & Co., — M —, 533 P 2d 1095.

92-615. Notice of denial of claim by insurer. Every insurer under any plan for the payment of workmen's compensation benefits shall within

thirty (30) days of receipt of a claim for compensation either accept or deny the claim, and if denied shall inform the claimant and the division in writing of such denial. If the insurer determines to deny a claim on which payments have been made during a time of further investigation, or after a claim has been accepted, terminates biweekly compensation benefits, it may do so only after fifteen (15) days' written notice to the claimant and the division. However, an insurer may, after written notice to the claimant and the division, make payment of compensation benefits within thirty (30) days of receipt of a claim for compensation without such payments being construed as an admission of liability or a waiver of any right of defense.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974.

Title of Act

An act requiring the insurer to accept or deny a claim within thirty (30) days of its filing; payment of weekly compensation until claimant returns to work; termination of compensation only upon notice and division approval; and payment of costs.

Amendments

The 1974 amendment inserted "for compensation" following "receipt of a claim" in the first sentence; inserted "and the division" after "inform the claimant" in the first sentence; deleted a sentence which read: "Biweekly compensation benefits shall be continuously paid until the claimant is fully released by his doctor, returns to work, or no longer suffers a loss of earnings capacity"; rewrote the present second sentence which read: "If the insurer determines to initially deny a claim, or after a claim has been accepted, terminates biweekly compensation benefits, it may do so only after fifteen (15) days written notice to the claimant and the division, and after written approval of the division"; and added the last sentence.

92-616. Costs and attorneys' fees payable on denial of claim later found compensable. In the event the insurer denies the claim for compensation or terminates compensation benefits, and the claim is later adjudged compensable, by the division or on appeal, the insurer shall pay reasonable costs and attorneys' fees as established by the division. However, under rules adopted by the division and in the discretion of the division, an insurer may suspend compensation payments for not more than thirty (30) days pending the receipt of medical information.

History: En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974.

Amendments

The 1974 amendment rewrote this section which read: "In the event the insurer denies the claim, or terminates a claim that has already been accepted, and the claim is later determined to be compensable either through hearing or appeal to the courts, the insurer shall pay all costs incurred by the claimant, including reasonable attorneys' fees as established by the division."

Effective Date

Section 3 of Ch. 173, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

Constitutionality

The fact that attorney's fees are allowed to successful plaintiffs only and not to successful defendants does not violate the equal protection clause of the Montana constitution, since it is reasonable to impose the burden of attorney's fees upon the party whose refusal to pay a just claim renders the litigation necessary. McMillen v. Arthur G. McKee & Co., — M —, 533 P 2d 1095.

Claim Adjudged Compensable

Where insurer and claimant became involved in a dispute as to whether the latter's compensation payments should be continued and claimant hired an attorney to pursue the matter, claimant was not entitled under this section to have his attorney's fees paid by the insurer, even if, as was alleged, the claimant would never have been placed back on compensation but for the attorney's efforts and his demand for a hearing on the validity of the claim; the language of the statute makes it clear that attorney's fees may be awarded only after a claim has been ad-

judicated, regardless of the extent of efforts stopping short of adjudication. Cosgrove v. Industrial Indemnity Co., — M —, 552 P 2d 622.

Insurer

The term "insurer" used in this section refers to every insurer under any one of the three plans for payment of benefits, and includes employers who are their own insurers under Plan I. McMillen v. Arthur G. McKee & Co., — M —, 533 P 2d 1095.

92-617. Payments by insurer prior to a hearing—reimbursement. If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the division may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing; but in no event may the biweekly compensation benefits be ordered to be paid under this section for a period exceeding forty-nine (49) days or for any period subsequent to the date of a hearing. If after a hearing it is held that the insurer was not liable for the compensation payments ordered by the division, the insurer has the right to be reimbursed for such payments by the claimant.

History: En. 92-617 by Sec. 1, Ch. 124, L. 1975.

Title of Act

An act allowing the division of workmen's compensation to order insurers to pay workmen's compensation benefits subject to a subsequent hearing, and subject to reimbursement for nonliability.

92-618. Payment by employer or insurer of fees for claimant's legal services and witnesses. (1) If an employer or insurer pays or tenders payment of compensation under Title 92, but controversy relates to the amount of compensation due, and the settlement or award is greater than the amount paid or tendered by the employer or insurer, a reasonable attorney's fee as established by the division or the workmen's compensation judge if the case has gone to a hearing, based solely upon the difference between the amount settled for or awarded and the amount tendered or paid, may be awarded in addition to the amount of compensation.

(2) When an attorney's fee is awarded against an employer or insurer under this section there may be further assessed against the employer or insurer reasonable costs, fees, and mileage for necessary witnesses attending a hearing on the claimant's behalf. Both the necessity for the witness and the reasonableness of the fees must be approved by the division or the workmen's compensation judge.

History: En. 92-618 by Sec. 1, Ch. 187, L. 1975.

Title of Act

An act providing for the payment of a workmen's compensation claimant's attorney and witness fees in certain cases.

92-619. Attorney's fees. (1) When an attorney represents or acts on behalf of a claimant or any other party on any workmen's compensation claim, the attorney shall submit to the division a contract of employment stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The administrator of the division may regulate the amount of the attorney's fee in any workmen's compensation case. In regulating the amount of the fee, the administrator shall consider the time the attorney

was required to spend on the case, the complexity of the case, and any other relevant matter the administrator may consider appropriate.

(3) If an attorney violates a provision of this section, a rule adopted under this section, or an order fixing attorney's fee under this section, he shall forfeit the right to any fee which he may have collected or been entitled to collect.

History: En. 92-619 by Sec. 1, Ch. 402, L. 1975.

Title of Act

An act providing for disclosure to the division of workmen's compensation of attorney fee arrangements, and regulating attorney fees in workmen's compensation cases.

Attorney's Fees

Attorney who charged fees in excess of amount ordered by industrial accident board pursuant to this section was properly subject to discipline by public censure. In re Porter, 156 M 190, 478 P 2d 866.

CHAPTER 7—COMPENSATION FOR VARIOUS INJURIES—AMOUNT—PAYMENT

Section 92-701.1. Compensation for injuries producing temporary total disability.
92-702.1. Compensation for injuries producing total permanent disability.
92-703.1. Compensation for injuries causing partial disability.
92-704.1. Compensation for injury causing death.
92-704.2. Application of act.
92-705. Providing for payment of burial expense.
92-706.1. Medical and hospital services approved by the division are furnished.
92-707. Compensation from what date paid.
92-708. Compensation to run consecutively—manner of payment.
92-709. Compensation in case of specified injuries.
92-709.1. Subsequent injury provisions—fund—procedures.
92-709.2. Disability benefits—indemnity benefits—election.
92-710. Occupational deafness.
92-715. Biweekly payments converted into a lump sum.

92-701. (2912) Repealed.

Repeal

Section 92-701 (Sec. 16, Ch. 96, L. 1915; Sec. 4, Ch. 100, L. 1919; Sec. 10, Ch. 121, L. 1925; Sec. 12, Ch. 177, L. 1929; Sec. 1, Ch. 230, L. 1947; Sec. 1, Ch. 7, L. 1949; Sec. 1, Ch. 48, L. 1951; Sec. 1, Ch. 38, L. 1953; Sec. 1, Ch. 253, L. 1955; Sec. 1, Ch. 234, L. 1957; Sec. 1, Ch. 162, L. 1961; Sec. 1, Ch. 149, L. 1965; Sec. 1, Ch. 207, L. 1967; Sec. 1, Ch. 285, L. 1969; Sec. 1, Ch. 174, L. 1971), relating to compensation for temporary total disability, was repealed by Sec. 2, Ch. 471, Laws 1973. For new law, see sec. 92-701.1.

92-701.1. Compensation for injuries producing temporary total disability. Weekly compensation benefits for injury producing total temporary disability shall be sixty-six and two-thirds per cent (66 2/3%) of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed one hundred ten dollars ($110) beginning July 1, 1973. Beginning July 1, 1974, the maximum weekly compensation benefits shall not exceed the state's average weekly wage. Total temporary disability benefits shall be paid for the duration of the worker's temporary disability.

In cases where it is determined that periodic benefits granted by the Social Security Act, 42 U.S.C. 301 (1935), are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero (0), by an amount equal, as nearly as practical, to one-half (½) the federal periodic benefits for such week.

History: En. 92-701.1 by Sec. 1, Ch. 471, L. 1973.

Title of Act

An act providing compensation for injuries producing total temporary disability under the Workmen's Compensation Act; repealing section 92-701, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 471, Laws 1973 read "Section 92-701, R. C. M. 1947, is repealed."

92-702. (2913) **Repealed.**

Repeal

Section 92-702 (Sec. 16, Ch. 96, L. 1915; Sec. 5, Ch. 100, L. 1919; Sec. 11, Ch. 121, L. 1925; Sec. 13, Ch. 177, L. 1929; Sec. 2, Ch. 230, L. 1947; Sec. 2, Ch. 7, L. 1949; Sec. 2, Ch. 48, L. 1951; Sec. 2, Ch. 38, L. 1953; Sec. 2, Ch. 253, L. 1955; Sec. 2, Ch. 234, L. 1957; Sec. 2, Ch. 162, L. 1961; Sec. 2, Ch. 149, L. 1965; Sec. 2, Ch. 207, L. 1967; Sec. 1, Ch. 279, L. 1969), relating to compensation for permanent total disability, was repealed by Sec. 2, Ch. 202, Laws 1973. For new law, see sec. 92-702.1.

92-702.1. **Compensation for injuries producing total permanent disability.** Weekly compensation benefits for injury producing total permanent disability shall be sixty-six and two-thirds per cent (66 2/3%) of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. Total permanent disability benefits shall be paid for the duration of the worker's total permanent disability.

In cases where it is determined that periodic benefits granted by the Social Security Act, 42 U.S.C. 301 (1935), are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero (0), by an amount equal, as nearly as practical, to one-half (½) the federal periodic benefits for such week.

History: En. 92-702.1 by Sec. 1, Ch. 202, L. 1973; amd. Sec. 1, Ch. 272, L. 1974.

Title of Act

An act providing compensation for injuries producing total permanent disability under the Workmen's Compensation Act; repealing section 92-702, R. C. M. 1947.

Amendments

The 1974 amendment rewrote part of the second paragraph following "payable under this section" which read: "shall be reduced by the amount of the federal periodic benefits for such week."

Repealing Clause

Section 2 of Ch. 202, Laws 1973 read "Section 92-702, R. C. M. 1947, is repealed."

92-703. (2914) **Repealed.**

Repeal

Section 92-703 (Sec. 16, Ch. 96, L. 1915; Sec. 6, Ch. 100, L. 1919; Sec. 2, Ch. 177, L. 1929; Sec. 3, Ch. 230, L. 1947; Sec. 3, Ch. 7, L. 1949; Sec. 3, Ch. 48, L. 1951; Sec. 3, Ch. 38, L. 1953; Sec. 3, Ch. 253, L. 1955; Sec. 3, Ch. 234, L. 1957; Sec. 3, Ch. 162, L. 1961; Sec. 3, Ch. 149, L. 1965; Sec. 3, Ch. 207, L. 1967), relating to compensation for partial disability, was repealed by Sec. 2, Ch. 155, Laws 1973. For new law, see sec. 92-703.1.

92-703.1. **Compensation for injuries causing partial disability.** (1) Weekly compensation benefits for injury producing partial disability shall be sixty-six and two-thirds per cent (66⅔%) of the actual diminution in the worker's earning capacity measured in dollars, subject to a maximum weekly compensation of one-half (½) the state's average weekly wage.

(2) The compensation shall be paid during the period of disability, not exceeding however, five hundred (500) weeks in cases of partial disability; provided, however, that compensation for partial disability resulting from the loss of or injury to any member shall not be payable for a greater number of weeks than is specified in section 92-709 for the loss of the member.

History: En. 92-703.1 by Sec. 1, Ch. 155, L. 1973; amd. Sec. 1, Ch. 241, L. 1975; amd. Sec. 1, Ch. 278, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 241, and once by Ch. 278. Neither amendatory act mentioned or included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Title of Act

An act providing for compensation for injuries producing partial disability under the Workmen's Compensation Act; repealing section 92-703, R. C. M. 1947.

Amendments

Chapter 241, Laws of 1975, divided the section into subsections; inserted "weekly" before "compensation" near the end of subsection (1); and substituted "one-half (½) the state's average weekly wage" for "sixty dollars ($60) a week" at the end of subsection (1).

Chapter 278, Laws of 1975, substituted "actual diminution in the worker's earning capacity measured in dollars" for "difference between the wages received at the time of the injury and the wages that the injured employee is capable of earning thereafter" in subsection (1).

Repealing Clause

Section 2 of Ch. 155, Laws 1973 read "Section 92-703, R. C. M. 1947, is repealed."

Loss of Earnings

Employee who was able to return to his former employment only with the assistance and indulgence of his employer and fellow employees, was not entitled to present compensation for loss of earning ability, but was protected by order of workmen's compensation division retaining jurisdiction if there should be a subsequent loss of earning capacity. Ronshaugen v. Ramsey Engineering Co., — M —, 531 P 2d 1348.

DECISIONS UNDER FORMER LAW

Compensable Disability

Test of compensable disability was difference between wages received at time of injury and wages injured employee was able to earn thereafter in any suitable field of employment or profession subsequently entered under normal conditions, whether or not his earnings in that field were commonly called "wages." Olson v. Manion's Inc., — M —, 510 P 2d 6, 9.

Computation of Average Weekly Wage

Former section 92-703 did not incorporate the six-day week component under former section 92-422 in determining pre- or post-injury earnings for partial disability, and in this manner was different from former sections 92-701 and 92-702, which dealt with total disability. Mahlum v. Broeder, 147 M 386, 412 P 2d 572.

Pre- or post-injury compensation for partial disability under former section 92-703 was determined by dividing a man's earnings over a reasonable period of time by the total number of days he worked, excluding all overtime and then multiplying the average daily wage by the number of days actually worked each week. Mahlum v. Broeder, 147 M 386, 412 P 2d 572.

Earning Capacity—Loss of Earnings

Under former section 92-703, coupled with section 92-709, a claimant could have an award of temporary total disability payments during period he was entirely disabled, an award of temporary partial disability payments while his injury was still healing and he was partially able to earn wages, and an additional award for loss of prospective future earnings as the result of permanent partial disability. Jones v. Claridge, 145 M 326, 400 P 2d 888.

Wages Received at Time of Injury

Court found no room for interpretation of words "wages received at the time of the injury" in this section, despite directive of section 92-838 to construe provisions of Compensation Act liberally. Olson v. Manion's Inc., — M —, 510 P 2d 6, 9.

92-704. (2915) Repealed.

Repeal

Section 92-704 (Sec. 16, Ch. 96, L. 1915; Sec. 7, Ch. 100, L. 1919; Sec. 12, Ch. 121, L. 1925; Sec. 14, Ch. 177, L. 1929; Sec. 4, Ch. 230, L. 1947; Sec. 4, Ch. 7, L. 1949; Sec. 4, Ch. 48, L. 1951; Sec. 4, Ch. 38, L. 1953; Sec. 4, Ch. 253, L. 1955; Sec. 4, Ch. 234, L. 1957; Sec. 4, Ch. 162, L. 1961; Sec. 4, Ch. 149, L. 1965; Sec. 1, Ch. 192, L. 1967; Sec. 4, Ch. 207, L. 1967), relating to compensation for injuries causing death, was repealed by Sec. 2, Ch. 203, Laws 1973. For new law, see sec. 92-704.1.

92-704.1. **Compensation for injury causing death.** (1) To beneficiaries as defined in section 92-413, subsections (1) through (4), weekly compensation benefits for injury causing death shall be sixty-six and two-thirds per cent (66 2/3%) of the decedent's wages. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. The minimum weekly compensation for death shall be fifty per cent (50%) of the state's average weekly wage, but in no event shall it exceed the decedent's actual wages at the time of his death.

(2) To beneficiaries as defined in section 92-413, subsections (5) and (6), weekly benefits shall be paid to the extent of the dependency at the time of the injury, subject to a maximum of sixty-six and two-thirds per cent (66 2/3%) of the decedent's wages. The maximum weekly compensation shall not exceed the state's average weekly wage.

(3) If the decedent leaves no beneficiary as defined in section 92-413, a lump sum payment of three thousand dollars ($3,000) shall be paid to the decedent's surviving parent or parents.

(4) Death benefits shall be paid to a widow or widower for life or until remarriage, and in the event of remarriage two (2) years' benefits shall be paid in a lump sum to the widow or widower. In all cases, benefits shall be paid to beneficiaries as defined in section 92-413.

History: En. 92-704.1 by Sec. 1, Ch. 203, L. 1973; amd. Sec. 2, Ch. 269, L. 1974; amd. Sec. 1, Ch. 270, L. 1974; amd. Sec. 2, Ch. 272, L. 1974.

Compiler's Notes

This section was amended three times in 1974, once by Ch. 269, once by Ch. 270, and once by Ch. 272. All of the amendatory acts deleted a paragraph quoted in the amendment note below and additional changes were made by Ch. 269. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by all amendments.

Title of Act

An act providing compensation for injuries causing death under the Workmen's Compensation Act; repealing section 92-704, R. C. M. 1947.

Amendments

Chapter 269, Laws of 1974, inserted the subsection designation (1); inserted "to beneficiaries as defined in section 92-413, subsections (1) through (4)" at the beginning of subsection (1); inserted subsections (2) and (3); inserted the subsection designation (4); substituted "section 92-413" for "this act" at the end of subsection (4); and deleted a final paragraph which read: "In cases where it is determined that periodic benefits granted by the Social Security Act, 42 U. S. C. 301 (1935), are payable because of the injury causing death, the weekly benefits payable under this section shall be reduced by the amount of the federal periodic benefits for such week."

Chapters 270 and 272, Laws of 1974, deleted the paragraph quoted above in this note.

Repealing Clause

Section 2 of Ch. 203, Laws 1973 read "Section 92-704, R. C. M. 1947, is repealed."

92-704.2. **Application of act.** The provisions of this act apply prospectively only. However, the division shall pay to any widow, widower or

beneficiary who did or shall become eligible for compensation for injury causing death after June 30, 1973, and before July 1, 1974, such sum or sums necessary to bring the total amount of compensation paid or to be paid as long as such person has, or remains eligible for compensation, to the amount such person would have received without the reduction for benefits granted by the Social Security Act. The division shall pay such sums in a lump sum as to compensation periods past and bi-weekly as to compensation to become due and from a special fund appropriated for this purpose.

History: En. 92-704.2 by Sec. 2, Ch. 270, L. 1974.

Title of Act

An act to amend section 92-704.1, R. C. M. 1947, relating to benefit reductions under the Workmen's Compensation Act; authorizing the division to make certain payments; and providing an effective date.

Effective Date

Section 3 of Ch. 270, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 22, 1974.

92-705. Providing for payment of burial expense. There shall be paid, in case of the death of an employee, which death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding one thousand one hundred dollars ($1,100) and such payment is not a part of the compensation which might be paid but is a benefit in addition to and separate and apart from compensation.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 2, Ch. 196, L. 1921; re-en. Sec. 2916, R. C. M. 1921; amd. Sec. 13, Ch. 121, L. 1925; amd. Sec. 1, Ch. 128, L. 1943; amd. Sec. 1, Ch. 213, L. 1945; amd. Sec. 6, Ch. 38, L. 1953; amd. Sec. 5, Ch. 234, L. 1957; amd. Sec. 1, Ch. 194, L. 1974.

Amendments

The 1974 amendment increased the maximum burial expense payment from $500 to $1,100.

92-706. (2917) Repealed.

Repeal

Section 92-706 (Sec. 16, Ch. 96, L. 1915; Sec. 3, Ch. 196, L. 1921; Sec. 14, Ch. 121, L. 1925; Sec. 15, Ch. 177, L. 1929; Sec. 2, Ch. 139, L. 1931; Sec. 1, Ch. 229, L. 1943; Sec. 2, Ch. 213, L. 1945; Sec. 1, Ch. 41, L. 1949; Sec. 7, Ch. 38, L. 1953; Sec. 5, Ch. 253, L. 1955; Sec. 6, Ch. 234, L. 1957; Sec. 1, Ch. 81, L. 1965; Sec. 1, Ch. 67, L. 1969; Sec. 1, Ch. 359, L. 1971), relating to medical and hospital services and other approved treatment, was repealed by Sec. 2, Ch. 252, Laws 1973. For new law, see sec. 92-706.1.

92-706.1. Medical and hospital services approved by the division are furnished. (1) In addition to the compensation provided by this act and as an additional benefit separate and apart from compensation, the following shall be furnished:

(a) After the happening of the injury, the employer or insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

(b) The employer or insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures

that are damaged or lost as a result of an injury, as defined in section 92-418, arising out of and in the course of employment.

(2) All hospitals must submit to the division of workmen's compensation, a schedule of fees and charges for treatment of injured workmen to be in effect for at least a twelve (12) month period unless the division and the hospital agree to interim amendments of the schedule. The schedule must be submitted at least thirty (30) days prior to its effective date and shall not exceed the charges prevailing in the hospital for similar treatment of private patients.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 43, and once by Ch. 189. Neither amendatory act mentioned or included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Title of Act

An act providing for medical and hospital services to be furnished injured claimants under the Workmen's Compensation Act; repealing section 92-706, R. C. M. 1947.

Amendments

Chapter 43, Laws of 1975, added subdivision (1)(b).

Chapter 189, Laws of 1975, divided the section into subsections and subdivisions; deleted "During the first thirty-six (36) months" at the beginning of subdivision (1)(a); inserted "without limitation as to length of time or dollar amount" in subdivision (1)(a); and deleted a second sentence in subdivision (1)(a) which read: "The division, upon application of the injured workman may, for good cause, grant reasonable extensions of the benefits provided in this section."

Repealing Clause

Section 2 of ch. 252, Laws 1973 read "Section 92-706, R. C. M. 1947, is repealed."

DECISIONS UNDER FORMER LAW

Limit of Recovery

The district court had no authority to order payment of bills in excess of $5,000, where medical expenses were, at the time of the injury, limited to $5,000 under former section 92-706. McAndrews v. Schwartz, — M —, 523 P 2d 1379.

92-707. (2918) **Compensation from what date paid.** When an injured employee has a beneficiary who is entitled to compensation in case of the employee's death, no compensation shall be paid for the first week of any injury, but if disability continues one (1) week, compensation shall be paid from the date of injury. However, separate benefits of medical and hospital services shall be furnished from the date of injury.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 196, L. 1921; re-en. Sec. 2918, R. C. M. 1921; amd. Sec. 3, Ch. 177, L. 1929; amd. Sec. 3, Ch. 213, L. 1945; amd. Sec. 5, Ch. 7, L. 1949; amd. Sec. 1, Ch. 144, L. 1969; amd. Sec. 18, Ch. 23, L. 1975; amd. Sec. 45, Ch. 535, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 23 and once by Ch. 535. The changes by Ch. 535, as described in the following amendment note, were essentially incorporated in the amendment by Ch. 23 and the section was set forth by the compiler as it appears in the latter act.

Amendments

The 1969 amendment substituted "one (1) week" for "six weeks" in the first sentence, and "one (1) week" for "three weeks" in the second sentence.

Chapter 23, Laws of 1975, rewrote this section which read: "When an injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, no compensation shall be allowed or paid during the first week of any injury, except as may be required by the provisions of the preceding section, but if disability continues one (1) week, compensation shall be paid from the date of injury. Where

the injured employee has a beneficiary or a major or minor dependent residing within the United States who would be entitled to compensation in case of his death, no compensation shall be paid for the first week of any injury, but if disability continues one (1) week, compensation shall be paid from the date of injury; provided, that separate benefits of medical and hospital services shall be furnished from date of injury."

Chapter 535, Laws of 1975, substituted "spouse" for "wife" in the first sentence and "the employee's death" for "his death" in the first and second sentences of this section as it read prior to the amendment by Ch. 23, Laws of 1975.

92-708. (2919) **Compensation to run consecutively—manner of payment.** Compensation shall run consecutively and not concurrently and payment shall not be made for two (2) classes of disability over the same period. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving spouse and stepchildren of such spouse the compensation shall be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in section 92-413, subsections (5) and (6) where there is more than one (1), shall be divided equitably among them and the question of dependency and amount thereof shall be a question of fact for determination by the division.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R. C. M. 1921; amd. Sec. 15, Ch. 121, L. 1925; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974.

Amendments

The 1973 amendment deleted two provisos reading "provided that the total period over which compensation shall be payable for two or more classes of disability, including death, resulting from any compensable injury, shall not extend for a period of more than five hundred (500) weeks, and provided that no compensation shall be paid to a major or minor dependent who did not reside in the United States at the date of the happening of the injury" from the end of the first sentence; and substituted "division" for "board" at the end of the fourth sentence.

The 1974 amendment substituted "surviving spouse" for "surviving widow" in two places in the third sentence and rewrote the fourth sentence which read: "Compensation due to major dependents where there be more than one (1), shall be divided equitably among them and likewise as to minor dependents, and the question of dependency and amount thereof shall be a question of fact for determination by the division."

Effective Date

Section 4 of Ch. 269, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

92-709. (2920) **Compensation in case of specified injuries.** (1) In addition to temporary total disability benefits allowed in this act, indemnity benefits for loss of a member shall be paid at the weekly rate provided in section 92-703.1, and shall be paid for the following periods: For loss of:

One arm at or near shoulder	280 weeks
One arm at the elbow	240 weeks
One arm between wrist and elbow	220 weeks
One hand	200 weeks
One thumb and the metacarpal bone thereof	75 weeks
One thumb at the proximal joint	37 weeks
One thumb at the second distal joint	25 weeks
One first finger and the metacarpal bone thereof	40 weeks
One first finger at the proximal joint	30 weeks

One first finger at the second joint	22 weeks
One first finger at the distal joint	15 weeks
One second finger and the metacarpal bone thereof	37 weeks
One second finger at the proximal joint	20 weeks
One second finger at the second joint	15 weeks
One second finger at the distal joint	8 weeks
One third finger and the metacarpal bone thereof	25 weeks
One third finger at the proximal joint	15 weeks
One third finger at the second joint	10 weeks
One third finger at the distal joint	5 weeks
One fourth finger and the metacarpal bone thereof	15 weeks
One fourth finger at the proximal joint	11 weeks
One fourth finger at the second joint	8 weeks
One fourth finger at the distal joint	6 weeks
One leg at or near the hip joint as to preclude the use of an artificial limb	300 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb	200 weeks
One leg between knee and ankle	190 weeks
One foot at the ankle	180 weeks
One great toe with the metatarsal bone thereof	37 weeks
One great toe at the proximal joint	18 weeks
One great toe at the second joint	12 weeks
One toe other than the great toe with the metatarsal bone thereof	16 weeks
One toe other than the great toe at the proximal joint	8 weeks
One toe other than the great toe at second or distal joint	5 weeks
One eye by enucleation	165 weeks
Total blindness of one eye	140 weeks
Total loss of hearing, one ear	40 weeks
Total loss of hearing, both ears	200 weeks

In all cases of permanent injury to a member less than loss of the member compensation shall be paid for total temporary disability, without limitation as to time under section 92-701.1. In addition thereto, indemnity benefits for permanent disability to a member or members shall be proportionate to loss or loss of use of the member or members at the weekly rate provided in section 92-703.1. In all other cases of permanent injury, less than total, not included in the above schedule, the compensation for partial disability shall bear such relation to the periods stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule or to partial disability (500 weeks).

Loss of vision: Where central visual acuity does not exceed 20/200 in the better eye with correcting lenses or the widest diameter of the visual field subtends an angle no greater than 20 degrees, the same as for loss of the eye.

Total loss of use: Indemnity benefits for permanent total loss of use of a member shall be the same as for loss of the member.

Disfigurement: The division may award proper and equitable indemnity benefits for serious face, head, or neck disfigurement, not to exceed twenty-five hundred dollars ($2,500) in addition to any other indemnity benefits payable under this section.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two (2) thereof, in one (1) accident, in the absence of conclusive proof to the contrary shall constitute total disability, permanent in character. Provided, however, that the percentage of permanent disability caused by any single accident or injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any previous physical ailment or defect or to any injury previously suffered or any permanent disability caused thereby; provided, that no payment under this section shall be in lieu of the separate benefit of medical and hospital services and of any benefits paid under section 92-701.1 for temporary total disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R. C. M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975.

Compiler's Notes

The subsection (1) designation was inserted by the 1975 amendment, apparently unintentionally; there are no other subsections.

Amendments

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses in the preliminary paragraph from $29 to $35, from $32 to $38, from $36 to $42, from $40 to $46, from $45 to $51, and from $50 to $56; and increased the minimum weekly compensation set forth at the end of the preliminary paragraph from $25.50 to $31.50.

The 1967 amendment increased the maximum weekly compensation set forth in the various clauses in the preliminary paragraph from $35 to $37 per week; from $38 to $40 per week; from $42 to $45 per week; from $46 to $50 per week; from $51 to $55 per week; from $56 to $60 per week; and increased the minimum weekly compensation set forth at the end of the preliminary paragraph from $31.50 to $34.50.

The 1971 amendment completely rewrote the preliminary paragraph; for previous text, see parent volume and above notes relating to 1965 and 1967 amendments. The 1971 amendment also inserted "In all other cases of permanent injury, less than total, not included in the above schedule, the compensation shall bear such relation to the periods stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule or to total disability (500 weeks)" following the schedule of injuries; and made minor changes in phraseology.

The 1973 amendment changed the statutory reference in the first sentence from 92-701 to 92-701.1; inserted "for loss of a member" twice in the preliminary clause; changed the statutory reference in the second sentence from 92-703 to 92-703.1; inserted the first two sentences following the schedule of payments; inserted "for partial disability" in the third sentence following the schedule of payments; substituted "partial" for "total" in the third sentence following the schedule of payments; deleted two paragraphs between the paragraphs headed "Total loss of use" and "Disfigurement"; substituted "division" for "board" under "Disfigurement"; and made a minor change in style.

The 1975 amendment deleted a sentence at the beginning of the section which read "In case of the following specified injuries, compensation for temporary total disability shall be paid at the weekly rate provided in section 92-701.1, during the healing period, but in no event shall the healing period for loss of a member exceed twenty-six (26) weeks"; substituted "In addition to temporary total disability benefits allowed in this act, indemnity benefits" for "In addition thereto but in lieu of any other compensation provided by this act, compensation" at the beginning of the section; and added at the end of the section "and of any benefits paid under section 92-701.1 for temporary total disability."

DECISIONS UNDER FORMER LAW

Additional Compensation

Under this section, coupled with former section 92-703, a claimant could have had an award of temporary total disability payments during period he was entirely disabled, an award of temporary partial disability payments while his injury was still healing and he was partially able to earn wages, and an additional award for loss of prospective future earnings as the result of permanent partial disability. Jones v. Claridge, 145 M 326, 400 P 2d 888.

Date of Accrual

Indemnity benefits accrue from the date the permanent nature of the disability becomes established. Jones v. Claridge, 145 M 326, 400 P 2d 888.

Partial Loss of Member

Award of 500 weeks' compensation for double vision in one eye was excessive in view of provision in this section allowing only 140 weeks' compensation for total blindness in one eye. Johnson v. Industrial Accident Board, 157 M 221, 483 P 2d 918.

92-709A. Repealed.

Repeal

Section 92-709A (Sec. 1, Ch. 190, L. 1951; Sec. 195, Ch. 147, L. 1963), relating to compensation for second injuries, was repealed by Sec. 2, Ch. 254, Laws 1973. For new law, see sec. 92-709.1.

92-709.1. Subsequent injury provisions — fund — procedures. (1) As used in this act:

(a) "Vocationally handicapped" means a person who has a medically certifiable permanent physical impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if employee should become unemployed considering such factors as the person's age, education, training, experience, and employment rejection.

(b) "Certifying agency" means the section of rehabilitation, division of workmen's compensation.

(c) "Certificate" means documentation issued by the certifying agency to an individual who is vocationally handicapped.

(d) "Fund" means the subsequent injury fund.

(2) A person who wishes to be certified as vocationally handicapped for purposes of this section may apply to the certifying agency on forms furnished by that agency. The certifying agency shall conduct an investigation and shall issue a certificate to a person who meets the requirements for vocationally handicapped certification.

(3) Upon commencement of employment or retention in employment of a certified vocationally handicapped person, the employer shall submit to the certifying agency, on forms furnished by the agency, all pertinent information requested by the agency. The certifying agency shall acknowledge receipt of the information. Failure to file the required information with the certifying agency within sixty (60) days after the first day of the vocationally handicapped person's employment or retention in employment, precludes the employer from the protection and benefits of this section unless the information is filed before an injury for which benefits are payable under this section.

(4) The administrator of the division shall promulgate rules for certification of vocationally handicapped persons.

(5) A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and re-

sulting in death or disability, shall be paid compensation in the manner and to the extent provided in this act, or in case of his death resulting from such injury, the compensation shall be paid to his beneficiaries or dependents. The liability of the employer for payment of compensation, for furnished medical care and burial as provided in this act shall be limited to those benefits occurring during the period of one hundred four (104) weeks after the date of injury. Thereafter, all compensation and the cost of all medical care and burial shall be the liability of the fund.

(6) When a vocationally handicapped person receives a personal injury, the procedure and practice provided in this act applies to all proceedings under this section, except where specifically otherwise provided herein. Not less than ninety (90) nor more than one hundred fifty (150) days before the expiration of one hundred four (104) weeks after the date of injury, the employer, carrier, or the industrial insurance fund, as the case may be, shall notify the fund whether it is likely that compensation may be payable beyond a period of one hundred four (104) weeks after the date of the injury. The fund, thereafter, may review, at reasonable times, such information as the employer, carrier or industrial insurance fund as regarding the accident, and the nature and extent of the injury and disability.

(7) If the fund does not notify the carrier of its intent to dispute the payment of compensation, medical and burial benefits, the employer, carrier, or industrial insurance fund, shall continue to make payments on behalf of the fund, and shall be reimbursed by the fund for all benefits paid that pertain to the period beyond one hundred four (104) weeks after the date of the injury. However, at any time subsequent to one hundred four (104) weeks after the date of injury, the fund may notify the carrier of a dispute as to payment of benefits. The liability of the fund to reimburse the employer, carrier, or the industrial insurance fund shall be suspended thirty (30) days thereafter until the controversy is determined.

(8) The obligation imposed by this section on the employer, carrier, or industrial insurance fund to make payments on behalf of the fund does not impose an independent liability on the employer, carrier or industrial insurance fund. After the right to reimbursement has been established, reimbursement payment shall be made promptly on a proper showing every six (6) months. If the employer, carrier or the industrial insurance fund does not make the payments on behalf of the fund, the fund may make the payments directly to the persons entitled to the payments.

(9) If an employee was employed or retained in employment under the provisions of this act and a dispute or controversy arises as to payment of benefits or the liability therefor, the division shall hold a hearing and resolve all disputes. On motion made in writing by the employer, carrier, or industrial insurance fund, the administrator shall join the fund as a party defendant.

(10) The division within five (5) days of the entry of an order joining the fund as a party defendant shall give the fund written notice thereof not less than twenty (20) days before the date of hearing and shall in-

clude the name of employee, employer, and the date of the alleged injury or disability. The fund, named as a defendant, shall have ten (10) days after the date of notification to file objections to being named as party defendant. On the date of the hearing at which the liability of the parties is determined, the hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection, and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(11) At the time of the hearing, the employer and fund may appear, cross-examine witnesses, give evidence and defend both on the issue of liability of the employer to the employee and on issue of the liability of the fund.

(12) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the employer and the fund.

(13) Benefits payable from the fund may be converted into a lump sum payment only upon a substantial showing for an equitable cause, the advisability of the lump sum payment to be determined and approved by the administrator of the division.

(a) In every case of the death of an employee under this act, the insurer shall pay to the fund the sum of one thousand dollars ($1,000). In addition, the division may assess every insurer an amount not to exceed five per cent (5%) of the compensation paid in Montana in the preceding fiscal year. The assessment shall be transmitted annually to the subsequent injury fund by the employer or insurer.

(b) When in judgment of the administrator the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities, the administrator may at his discretion suspend or reduce further collection of assessments for a period of time determined by the administrator.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973.

Title of Act

An act providing for a subsequent injury fund in the Workmen's Compensation Act; and repealing section 92-709A, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 254, Laws 1973 read "Section 92-709A, R. C. M. 1947, is repealed, and the assets and liabilities acquired under this section are hereby transferred to the subsequent injury fund."

92-709.2. Disability benefits — indemnity benefits — election. (1) In addition to temporary total disability benefits allowed in this act, a worker whose injury results in partial disability is entitled to receive compensation under section 92-703.1 or indemnity benefits under section 92-709.

(2) A worker who has elected to proceed under section 92-709 may withdraw his election at any time and shall be entitled to compensation under section 92-703.1 during the remaining period of his disability, provided however, that he shall not be entitled to receive benefits under both sections during any month.

(3) A worker who has elected to proceed under section 92-703.1 may withdraw his election at any time and is entitled to receive indemnity

benefits under section 92-709, provided however, that he shall not be entitled to a greater benefit including compensation paid under section 92-703.1, than he would have received if he had proceeded exclusively under section 92-709, and provided further that he shall not be entitled to receive benefits under both sections during any month.

History: En. 92-709.2 by Sec. 1, Ch. 386, L. 1975.

Title of Act

An act relating to the payment of partial disability or indemnity benefits; and amending section 92-709, R. C. M. 1947.

92-710. Occupational deafness. Regardless of other definitions of injury and time limitations imposed by this act, there shall be compensation awarded for occupational deafness as follows:

(1) "Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment. "Noise" means sound capable of producing occupational deafness. "Noisy employment" means employment in the performance of which an employee is subjected to noise.

(a) Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of 500, 1000 and 2000 cycles per second. Loss of hearing ability for frequency tones above 2000 cycles per second is not to be considered as constituting disability for hearing.

(b) The per cent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1000 and 2000 cycles per second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, shall be used for measuring hearing loss. If the losses of hearing average 25 decibels or less in the three frequencies, as measured under ISO Standard 1964, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average 92 decibels or more in the three frequencies, as measured under ISO Standard 1964, then the same shall constitute and be total or 100 per cent compensable hearing loss.

(c) In measuring hearing impairment the lowest measured losses in each of the three frequencies shall be added together and divided by three to determine the average decibel loss. For every decibel of loss exceeding 25 decibels an allowance of one and one-half per cent (1½%) shall be made up to the maximum of one hundred per cent (100%), which is reached at 92 decibels.

(d) In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five (5). The resulting figure shall be added to the percentage of impairment in the poorer ear and the sum of the two divided by six (6). The final percentage shall be representative of the binaural hearing impairment.

(e) Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss, one-half decibel for each

year of the employee's age over forty at the time of last exposure to industrial noise.

(f) No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

(2) No benefits shall be payable for temporary total or temporary partial disability under this act for loss of hearing due to prolonged exposure to noise.

(3) An employee who because of occupational deafness is transferred by his employer to other employment and thereby sustains actual wage loss, shall be compensated at the rate provided in section 92-703.1, not exceeding three thousand five hundred dollars ($3,500) in the aggregate from all employers. "Time of injury," "incurred such injury," "date of injury" in such case shall be the date of wage loss.

(4) Subject to the limitations herein contained, there shall be payable for total occupational deafness of one ear, forty (40) weeks of compensation; for total occupational deafness of both ears, two hundred (200) weeks of compensation; and for partial occupational deafness, compensation shall bear such relation to that named herein as disabilities bear to the maximum disabilities herein provided.

In cases covered by this subsection, "time of injury," "incurred such injury" or "date of injury" shall be exclusively the date of occurrence of any of the following events to an employee:

(a) Transfer because of occupational deafness to nonnoisy employment by an employer whose employment has caused occupational deafness;

(b) Retirement;

(c) Termination of the employer-employee relationship;

(d) Layoff, provided the layoff is complete and continuous for one year;

(e) No claim under this subsection shall be filed, however, until six (6) consecutive months of removal from noisy employment after the time of injury except that under subparagraph (d), such six (6) consecutive months period may commence within the last six (6) months of layoff.

(5) The limitation provisions in this act shall control claims arising under this subsection. Such provisions shall run from the first date upon which claim may be filed, or from the date of subsequent death, provided that no claim shall accrue to any dependent unless an award has been issued or liability admitted.

(6) No payment shall be made to an employee under this section unless he shall have worked in noisy employment for a total period of at least ninety (90) days for the employer from whom he claims compensation.

(7) Any amount paid to an employee under this section by an employer shall be credited against compensation payable by any employer to

such employee for occupational deafness under subsections (3) and (4). No employee shall in the aggregate receive greater compensation from any or all employers for occupational deafness than that provided in this section for total occupational deafness.

(8) Occupational deafness as herein provided is distinguished from traumatic loss of hearing which is governed by the specific loss schedule hereinabove.

(9) An employer shall become liable for the entire occupational deafness to which his employment has contributed; but if previous deafness is established by hearing test or other competent evidence, whether or not the employee was exposed to noise within the six (6) months preceding such test, he shall not be liable for previous loss so established nor shall he be liable for any loss for which compensation has previously been paid or awarded.

(10) No claim shall be filed, however, unless the employee is exposed eight (8) hours daily and for a period of at least ninety (90) days as above required to noise intensity levels above 90 decibels.

(11) This act shall become effective January 1, 1974.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973.

Compiler's Notes

Section 1 of Ch. 366, Laws of 1971, enacted the section and assigned the section number in lieu of former section 92-710 R. C. M. 1947.

Title of Act

An act to provide compensation for loss of hearing resulting from exposure to industrial noise.

Amendments

The 1973 amendment reduced the hearing loss specified in the third sentence of subdivision (1) (b) from 26 to 25 decibels; reduced the hearing loss specified in the fourth sentence of subdivision (1) (b) and at the end of subdivision (1) (c) from 94 to 92 decibels; increased the hearing loss specified near the beginning of the second sentence of subdivision (1) (c) from 24 to 25 decibels; changed the statutory reference in subdivision (3) from 92-703 to 92-703.1; reduced the noise intensity level specified at the end of subdivision (10) from 100 to 90 decibels; changed the date specified in subdivision (11) from January 1, 1972 to January 1, 1974; and made changes in style.

92-715. (2926) **Biweekly payments converted into a lump sum.** The biweekly payments provided for in this act may be converted, in whole or in part, into a lump-sum payment. Such conversion can only be made upon the written application of the injured worker or the worker's beneficiary, and shall rest in the discretion of the division, both as to the amount of such lump-sum payment and the advisability of such conversion. The division is hereby vested with full power, authority, and jurisdiction to compromise claims and to approve compromises of claims under this act. All settlements and compromises of compensation provided in this act are void without the approval of the division. Any approval of the division must be in writing and set forth specifically the reasons for such lump-sum or compromise payment. The division shall directly notify every claimant of any division order approving or denying a claimant's settlement or compromise of a claim.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 9, Ch. 100, L. 1919; re-en. Sec. 2926, R. C. M. 1921; amd. Sec. 1, Ch. 225, L. 1951; amd. Sec. 8, Ch. 234, L. 1957; amd. Sec. 2, Ch. 197, L. 1961; amd. Sec. 1, Ch. 9, L. 1975; amd. Sec. 1, Ch. 11, L. 1975; amd. Sec. 19, Ch. 23, L. 1975.

Compiler's Notes

This chapter was amended three times in 1975, once by Ch. 9, once by Ch. 11 and once by Ch. 23. None of the amendatory acts mentioned the others. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by all three amendments.

Amendments

Chapter 9, Laws of 1975, substituted "division" for "board" throughout the section; added the last sentence; and made minor changes in phraseology and style.

Chapter 11, Laws of 1975, deleted "which lump-sum payment shall not exceed the estimated value of the present worth of the deferred payments capitalized at the rate of two per centum (2%) per annum" from the end of the first sentence; and substituted "division" for "board" throughout the section.

Chapter 23, Laws of 1975, substituted "worker or the worker's beneficiary" in the second sentence for "workman, his beneficiary, or major or minor dependents, as the case may be"; substituted "division" for "board" throughout the section; and made minor changes in phraseology and style.

Effective Date

Section 2, Ch. 11, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved February 17, 1975.

Discretion of Board

Board had discretion to order lump-sum payment of award for permanent and total disability in light of medical testimony that disability was partly psychosomatic and chance of rehabilitation would be improved by complete settlement. Legowik v. Montgomery Ward & Co., 157 M 436, 486 P 2d 867.

Industrial accident board did not abuse discretion by denying lump-sum settlement where claimant had no pressing need and his only concerns were to pay attorney's fees expended in pressing claim and to put the lump-sum payment "on interest." Kent v. Sievert, 158 M 79, 489 P 2d 104.

Partial Lump-Sum Award

Division has authority to grant partial lump-sum award to claimant with that lump sum deducted from the last eighty payments of a 500 week award for partial disability; award of $3,200 as a partial lump-sum award was reasonable where claimant's employment prospects were negligible and he had past due indebtedness on his house and pickup truck and miscellaneous bills, including attorney fees; division should have determined estimated value of present worth of deferred payments and converted the lump sum to that amount. Kuehn v. National Farmers Union Property & Casualty Co., — M —, 521 P 2d 921.

CHAPTER 8—MISCELLANEOUS REGULATIONS—POWERS OF DIVISION—REHEARINGS AND APPEALS

Section 92-804. Misrepresenting payroll.
92-806. Duplicate receipts paid for injuries to be filed—statements of medical expenditures.
92-808. Employers and insurers required to file reports of accidents.
92-814. Powers of division.
92-814.1. Requiring claimant to submit to examination—report of physician—cost.
92-818. Certificates and certified copies as evidence.
92-820. Books, records and payrolls to be open to inspection.
92-826. Jurisdiction to rescind or amend any order, decision, award, etc.
92-842. Annual report—copies for general distribution.
92-844. Public records—right to inspect.
92-845. Duties of administrator.
92-846. Certified copies of public records—fees.
92-847. Records exempt from disclosure.
92-848. Powers of the workers' compensation judge.
92-849. Increase in award for unreasonable delay or refusal to pay.
92-850. Location of office.
92-851. Operating expenses.
92-852. Administrative Procedure Act.

92-804. (2930) **Misrepresenting payroll.** Any employer who misrepresents to the division the amount of a payroll upon which the premiums

or assessments under compensation plan number three are to be levied, or upon which fees for factory inspection, subsequent inspection, or reinspection, as elsewhere provided in this act, are based, shall be liable to the state in ten (10) times the amount of difference between the amount paid and the amount which should have been paid. Such liability may be recovered in a civil action brought in the name of the state. All sums collected under this section shall be paid into the fund to which the original payments were, or should have been credited.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2930, R. C. M. 1921; amd. Sec. 20, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board"; and made minor changes in phraseology and style.

92-806. (2932) **Duplicate receipts paid for injuries to be filed—statements of medical expenditures.** Every employer coming under the provisions of compensation plan number one, and every insurer coming under the provisions of compensation plan number two, shall, on or before the fifteenth day of each and every month, file with the division duplicate receipts for all payments made during the previous month to injured workers or their beneficiaries or dependents; and statements showing the amounts expended during the previous month for medical, surgical, and hospital services, and for the burial of injured workers.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2932, R. C. M. 1921; amd. Sec. 21, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" and "workers" for "workmen" throughout the section.

92-807. (2933) **Notice of claims for injuries other than death.**

References

La Forest v. Safeway Stores, Inc., 147 M 431, 414 P 2d 200.

92-808. (2934) **Employers and insurers required to file reports of accidents.** Every employer of labor and every insurer is hereby required to file with the division, under such rules as the division may, from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the division in such form and such detail as the division shall from time to time prescribe, and shall make specific answers to all questions required by the division under its rules, except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2934, R. C. M. 1921; amd. Sec. 22, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section; and deleted "and regulations" after "rules" in two places.

Failure to File

Where employee was injured while performing work assigned to him under contract between his employer and second company, failure of second company to file timely injury report with industrial accident board prevented it from invoking exclusive jurisdiction in board as "exclusive remedy" after employee filed civil suit in district court. State ex rel. Broesder v. Industrial Accident Board, 154 M 178, 461 P 2d 456.

92-809. (2935) **Repealed.**

Repeal

Section 92-809 (Sec. 17, Ch. 96, L. 1915), relating to use of confidential information, was repealed by Sec. 5, Ch. 25, Laws 1975. Section 23, Ch. 23, Laws 1975 purported to amend the section.

92-810. (2936) **Repealed.**

Repeal

Section 92-810 (Sec. 17, Ch. 96, L. 1915), relating to mortality tables, was repealed by Sec. 1, Ch. 106, Laws 1973.

92-812, 92-813. (2938, 2939) **Repealed.**

Repeal

Sections 92-812, 92-813 (Sec. 18, Ch. 96, L. 1915), relating to the technical rules for hearings, investigations, and depositions, were repealed by Sec. 7, Ch. 537, Laws 1975. Sections 24 and 25, Ch. 23, Laws 1975 purported to amend these sections.

92-814. (2940) **Powers of division.** The division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this act.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2940, R. C. M. 1921; amd. Sec. 26, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" at the beginning of the section.

92-814.1. Requiring claimant to submit to examination—report of physician—cost. In the event of a dispute concerning the physical condition of a claimant, or the cause or causes of his injury or disability, if any, the division, at the request of the claimant, employer or insurer, as the case may be, shall require the claimant to submit to such examination as it may deem desirable by a physician or physicians within the state of Montana or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician making the examination shall file a written report of his findings with the division for its use in the determination of the controversy involved. The division shall pay the physician for the examination and shall be reimbursed by the party who requested it.

History: En. Sec. 10, Ch. 234, L. 1957; amd. Sec. 27, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board"; and made minor changes in phraseology.

92-815 to 92-817. (2941 to 2943) **Repealed.**

Repeal

Sections 92-815 to 92-817 (Sec. 18, Ch. 96, L. 1915), relating to judicial powers of the industrial accident board, were repealed by Sec. 7, Ch. 537, Laws 1975. Sections 28 to 30, Ch. 23, Laws 1975 purported to amend these sections.

92-818. (2944) **Certificates and certified copies as evidence.** Copies of official documents and orders filed or deposited according to law in the office of the division, certified to by a member of the division, or by the secretary under the official seal of the division, to be true copies of the orig-

inal, shall be evidence in like manner as the originals. In any court proceeding, wherein the question as to whether or not an employer or employee has complied with and is operating under or bound by the provisions of the Workers' Compensation Act of the state of Montana, is a question for determination, a certificate by a member of the division, or by the secretary under the official seal of the division, certifying that such employer or employee has or has not complied with, and is or is not operating under, and is or is not bound by the provisions of the Workers' Compensation Act of the state of Montana, shall be prima facie evidence thereof.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2944, R. C. M. 1921; amd. Sec. 8, Ch. 177, L. 1929; amd. Sec. 31, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" and "Workers'" for "Workmen's" throughout the section.

92-819. (2945) **Repealed.**

Repeal

Section 92-819 (Sec. 18, Ch. 96, L. 1915; Sec. 3, Ch. 139, L. 1931; Sec. 2, Ch. 162, L. 1937; Sec. 1, Ch. 184, L. 1947; Sec. 2, Ch. 176, L. 1957), relating to apportionment of costs and expenses of a hearing before the industrial accident board, was repealed by Sec. 7, Ch. 537, Laws 1975. Section 32, Ch. 23, Laws 1975 purported to amend this section.

92-820. (2946) **Books, records and payrolls to be open to inspection.** The books, records, and payrolls of the employer, pertinent to the administration of this act, shall always be open to inspection by the division or any duly authorized employee thereof, for the purpose of ascertaining the correctness of the payroll, the number of men employed, and such other information as may be necessary for the division and its management under this act. Refusal on the part of the employer to submit said books, records, and payrolls for such inspection shall subject the offending employer to a penalty of one hundred dollars ($100) for each offense, to be collected by civil action in the name of the state, and paid into the state treasury.

History: En. Sec. 19, Ch. 96, L. 1915; re-en. Sec. 2946, R. C. M. 1921; amd. Sec. 166, Ch. 147, L. 1963; amd. Sec. 33, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section; and made a minor change in style.

92-821 to 92-824.1, 92-825. (2947 to 2951) **Repealed.**

Repeal

Sections 92-821 to 92-824.1, 92-825 (Sec. 20, Ch. 96, L. 1915; Sec. 8, Ch. 38, L. 1953; Sec. 1, Ch. 227, L. 1961), relating to the jurisdiction of the industrial accident board; the legality of its rules, findings, and orders; the authority to award compensation and to increase such award for unreasonable delay, or to make a nominal award, were repealed by Sec. 7, Ch. 537, Laws 1975. Sections 34 to 39, Ch. 23, Laws 1975 purported to amend these sections.

92-826. (2952) **Jurisdiction to rescind or amend any order, decision, award, etc.** The division shall have continuing jurisdiction over all its orders, decisions, and awards, and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor. Provided, that the division shall not have power to rescind, alter, or amend any final settlement or award of compensation more

than four (4) years after the same has been made, and provided further that the division shall not have the power to rescind, alter or amend any order approving a full and final compromise settlement of compensation. Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award, shall have the same effect as original orders or awards.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2952, R. C. M. 1921; amd. Sec. 9, Ch. 177, L. 1929; amd. Sec. 1, Ch. 67, L. 1937; amd. Sec. 40, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section.

Additional Evidence

Where a final decision to stop payments under workmen's compensation had been made by the industrial accident board, testimony of claimant's personal physician as to his examination of her more than six years earlier was relevant and should have been reconsidered by the board, "good cause" thus having been shown. Johnson v. Industrial Accident Board, 157 M 221, 483 P 2d 918.

Compromise Settlement

Where employee sought, agreed to and accepted a full and final compromise settlement of his compensation claim, board was precluded under this section from reconsidering his claim. State ex rel. Montana Phosphate Products Co. v. Industrial Accident Board, 156 M 466, 481 P 2d 684.

Degree of Permanent Physical Impairment Unknown

Where the board found that a compensable impairment existed, but the degree of permanent physical impairment was unknown, it was proper to award nominal disability indemnity under this section. Benoit v. Murphy Corp., 143 M 463, 391 P 2d 350.

Final Order—Statute of Limitations

Where final award was made in industrial accident compensation case fourteen years before claimant sought to reopen claim, four-year statute of limitations barred reopening claim. Rassley v. Security Transport, — M —, 542 P 2d 1214.

Fraudulent Claim

Award of lump-sum settlement based on a petition forged by employer's claims manager did not determine injured employee's right to lump-sum settlement, and employee had no cause of action against the employer arising out of claims manager's subsequent forgery and conversion of the lump-sum check. Lewis v. Anaconda Co., 160 M 478, 503 P 2d 535.

92-827 to 92-836. (2953 to 2962) Repealed.

Repeal

Sections 92-827 to 92-836 (Secs. 20 to 22, Ch. 96, L. 1915; Sec. 10, Ch. 177, L. 1929; Sec. 4, Ch. 139, L. 1931; Sec. 3, Ch. 162, L. 1937; Sec. 1, Ch. 170, L. 1959; Sec. 1, Ch. 111, L. 1965; Sec. 7, Ch. 149, L. 1965), relating to the record of proceedings, attorney fees, amendment of the award, rehearings and appeals, were repealed by Sec. 7, Ch. 537, Laws 1975. Sections 41 to 49, Ch. 23, Laws 1975 purported to amend secs. 92-827 to 92-832, 92-834 to 92-836.

92-838. (2964) Court to give liberal construction to act.

Failure to List Children in Claim

Where claimant failed to list all of his children in his claim for compensation it did not constitute a waiver of the claim. Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

Wages at Time of Injury

Notwithstanding this section's directive to construe provisions of Compensation Act liberally, court found no room for interpretation of words "wages received at the time of the injury" in former section 92-703. Olson v. Manion's Inc., — M —, 510 P 2d 6, 9.

References

State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54.

92-841. (2967) Repealed.

Repeal

Section 92-841 (Sec. 24, Ch. 96, L. 1915), relating to actions pending before the industrial accident board prior to July 1, 1915, was repealed by Sec. 88, Ch. 23, Laws 1975.

92-842. (2968) **Annual report—copies for general distribution.** The division shall, not later than October 1 of each year, make a report to the governor covering its entire operations and proceedings for the preceding fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of such report shall be printed for general distribution.

History: En. Sec. 25, Ch. 96, L. 1915; re-en. Sec. 2968, R. C. M. 1921; amd. Sec. 50, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" at the beginning of the section; and made a minor change in phraseology.

92-843. (2969) **Repealed.**

Repeal

Section 92-843 (Sec. 25, Ch. 96, L. 1915), relating to the effective date of the Workmen's Compensation Act, was repealed by Sec. 88, Ch. 23, Laws 1975.

92-844. Public records—right to inspect. Each person has a right to inspect any public record of the division of workmen's compensation, except as otherwise expressly provided by law. For the purposes of this act "public record" means any writing containing information relating to the conduct of the public's business, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

History: En. 92-844 by Sec. 1, Ch. 25, L. 1975.

Title of Act

An act allowing public inspection of the records of the division of workmen's compensation, providing exemptions, and repealing sections 92-809 and 92-1348, R. C. M. 1947.

92-845. Duties of administrator. The administrator of the division shall furnish proper and reasonable opportunities for inspection and examination of the records under his control and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to examine them. The administrator may make reasonable rules necessary for the protection of the records and necessary to prevent interference with the regular discharge of his duties.

History: En. 92-845 by Sec. 2, Ch. 25, L. 1975.

92-846. Certified copies of public records—fees. (1) The administrator of the division shall, on demand, furnish a certified copy of any public record to a person who has a right to inspect it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The administrator of the division may establish fees reasonably calculated to reimburse the division for its actual cost in making such records available.

History: En. 92-846 by Sec. 3, Ch. 25, L. 1975.

92-847. Records exempt from disclosure. (1) In assuring that the right of individual privacy so essential to the well-being of a free society

shall not be infringed without the showing of a compelling state interest, the following public records of the division are exempt from disclosure:

(a) information of a personal nature such as personal, medical, or similar information, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.

(2) If any public record of the division contains material which is not exempt under subsection (1) of this section, as well as material which is exempt from disclosure, the administrator of the division shall separate the exempt and nonexempt and make the nonexempt material available for examination.

History: En. 92-847 by Sec. 4, Ch. 25, L. 1975.

Repealing Clause

Section 5 of Ch. 25, Laws 1975 read "Sections 92-809 and 92-1348, R. C. M. 1947, are repealed."

92-848. Powers of the workers' compensation judge. (1) A claimant, compensation plan one employer, or insurer who has a dispute concerning any benefits under Title 92, R. C. M. 1947, may petition the workers' compensation judge provided for in section 82A-1016. The judge, after a hearing, shall make a final determination of the dispute and, in accordance with the law on benefits as set forth in Title 92, fix and determine any benefits to be paid, and specify the manner of payment.

(2) The judge may grant nominal disability awards in cases where it is found that an accident has occurred in the course and scope of employment, but no disability has resulted therefrom.

(3) All orders allowing full and final compromise settlements of workers' compensation claims shall be immediately referred to the workers' compensation judge, and the judge may within ten (10) days of the judge's receipt of an order disapprove an order allowing a full and final compromise settlement.

(4) The judge has continuing jurisdiction of cases in which a petition under subsection (1) of this section has been filed, and may, upon the application of any party, review, diminish, or increase in accordance with the law on benefits as set forth in Title 92, any benefits awarded or settlement agreements, except for any final settlement or award of compensation more than four (4) years after the settlement has been made and except for any order approving a full and final compromise settlement of compensation, upon the grounds that the disability of the person has changed.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975.

92-849. Increase in award for unreasonable delay or refusal to pay. When payment of compensation has been unreasonably delayed or refused, either prior or subsequent to the issuance of an award, the full amount of

the order, decision or award may be increased by ten per cent (10%) of the weekly award. The question of unreasonable delay or refusal shall be determined by the workers' compensation judge and such a finding constitutes good cause to rescind, alter or amend any order, decision or award previously made in the cause for the purpose of making the increase provided herein.

History: En. 92-849 by Sec. 3, Ch. 537, L. 1975.

92-850. Location of office. The principal office of the workers' compensation judge shall be in the city of Helena.

History: En. 92-850 by Sec. 4, Ch. 537, L. 1975.

92-851. Operating expenses. The workers' compensation judge may employ such employees as may be required to carry out the duties under this act. All expenditures of the workers' compensation judge, including but not limited to salaries, traveling expenses, office rent, office equipment and supplies, shall be paid out of the workers' compensation administration fund.

History: En. 92-851 by Sec. 5, Ch. 537, L. 1975.

92-852. Administrative Procedure Act. (1) All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. However, the workers' compensation judge is not bound by common law and statutory rules of evidence.

(2) Notwithstanding section 82-4216, R. C. M. 1947, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.

History: En. 92-852 by Sec. 6, Ch. 537, L. 1975.

Repealing Clause

Section 7 of Ch. 537, Laws 1975 read "Sections 92-812, 92-813, 92-815 through 92-817, 92-819, 92-821, 92-822, 92-823, 92-824, 92-824.1, 92-825, 92-827 through 92-836, 92-1347, 92-1350, 92-1351, 92-1353 through 92-1355, 92-1357, 92-1359 through 92-1365, R. C. M. 1947, are repealed."

Effective Date

Section 8 of Ch. 537, Laws 1975 read "Section 1 [82A-1016] of this act is effective on passage and approval."

Scope of Review

Review of workers' compensation court proceedings under this section should be no different in scope from review of decisions of the workmen's compensation division under prior law; decisions of the court will not be disturbed if supported by substantial evidence. Skrukrud v. Gallatin Laundry Co., — M —, 557 P 2d 278.

DECISIONS UNDER FORMER LAW

Court Must Base Findings on Division's Decision

Where district court totally ignored proceedings at administrative level and modified award, granting to individual amount for loss of earning capacity in addition to statutory benefit for functional impairment, district court judgment was legally improper, and facts did not support conclusions of law of district court. DeLeary v. Anaconda Aluminum Co., — M —, 541 P 2d 788.

Court Required to Make Findings of Fact and Conclusions of Law

While there is no rule of law requiring the district court to adopt the proposed findings and conclusions of either litigant on appeal in a workmen's compensation case, and the court may request that the litigants submit such findings, or litigants may submit them without a request by the court, it is clear that the legislature intended that the court make findings of fact and conclusions of law in all cases on appeal. Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

Jurisdiction of District Court

District court had no jurisdiction to hear claimant's appeal from the decision of the industrial accident board when the court's seat was in neither the county of the employer's residence nor the county of the place of the accident. State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54.

Payment Pending Appeal

Payment of benefits by insurance carrier in accordance with order of industrial accident board did not render appeal from such order moot and subject to dismissal, since under this section order of board must be carried out by carrier unless it makes application for stay, in view of fact that receipt for payment stated that it was "subject to claimant's appellate rights." Bigar v. Tri-State Sand & Gravel Inc., 157 M 459, 486 P 2d 881.

Standard of Review

Appellate court must sustain division action, if evidence is sufficient to support findings, even though some evidentiary conflict may exist. Lewis v. Anaconda Co., — M —, 543 P 2d 1339.

CHAPTER 9—COMPENSATION PLAN NO. 1

Section 92-901. When and how employer may elect to adopt—direct payment to employee.
92-902. Proof of solvency of employer electing plan No. 1 to be filed—payroll assessments.
92-903. Employer permitted to carry on business and settle directly with employee—renewal of application.
92-904. Additional proof of solvency—revocation of order.
92-905. Requiring security of employer.
92-906. Failure of employer to pay compensation—duty of division.
92-907. When employer to make deposit or security to guarantee payment of compensation.
92-908. When employer may be relieved from liability.

92-901. (2970) **When and how employer may elect to adopt—direct payment to employee.**

COMPENSATION PLAN NUMBER ONE

An employer may elect to be bound by compensation plan No. 1, upon furnishing satisfactory proof to the division of his solvency and financial ability to pay the compensation and benefits in this act provided for, and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, may, by order of the division, make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2970, R. C. M. 1921; amd. Sec. 2, Ch. 443, L. 1973.

Amendments

The 1973 amendment deleted "in the industries, trades, works, occupations, or employments in this act specified as hazardous," following "employer" at the beginning of the section; substituted "division" for "board" in two places; and made minor changes in phraseology.

92-902. (2971) **Proof of solvency of employer electing plan No. 1 to be filed—payroll assessments.** Every employer who has elected to be

bound by compensation plan No. 1, shall file proof of his solvency within the time and in the form as may be prescribed by the rules or orders of the division.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R. C. M. 1921; amd. Sec. 5, Ch. 139, L. 1931; amd. Sec. 3, Ch. 176, L. 1957; amd. Sec. 169, Ch. 147, L. 1963; amd. Sec. 1, Ch. 183, L. 1965; amd. Sec. 1, Ch. 170, L. 1969; amd. Sec. 1, Ch. 143, L. 1971; amd. Sec. 3, Ch. 443, L. 1973; amd. Sec. 2, Ch. 318, L. 1975.

Amendments

The 1965 amendment increased the minimum assessment specified in the third paragraph from $10 to $75.

The 1969 amendment increased the minimum assessment specified in the third paragraph from $75 to $200.

The 1971 amendment substituted "may" for "shall" before "levy an assessment" in the second paragraph; increased the maximum assessment rates specified in the second paragraph from two hundredths to three hundredths of one per cent; and made minor changes in phraseology.

The 1973 amendment deleted "now or hereafter engaged in the state of Montana, in the industries, trades, works, occupations, or employments herein mentioned" after "employer" near the beginning of the section; substituted "division" for "board" in three places and for "treasurer of the board" in the final paragraph; and made minor changes in phraseology.

The 1975 amendment deleted the last four paragraphs relating to payroll assessments. For prior version, see parent volume and 1965 to 1973 amendment notes.

Repealing Clause

Section 2 of Ch. 183, Laws 1965 repealed all acts and parts of acts in conflict therewith.

92-903. (2972) **Employer permitted to carry on business and settle directly with employee—renewal of application.** If such employer, making such election, shall be found by the division to have the requisite financial ability to pay the compensation and benefits in this act provided for, then the division shall grant to the employer permission to carry on his business for the fiscal year within which such election is made, and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same. Every employer, so long as he continues in his employment, and so long as he continues to be bound by compensation plan No. 1, shall, at least thirty (30) days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the board [division] may renew the same from year to year.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R. C. M. 1921; amd. Sec. 51, Ch. 23, L. 1975.

Compiler's Notes

The bracketed word "division" near the end of the section has been inserted by the compiler in conformity with the 1975 amendment.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section; and made minor changes in phraseology and style.

92-904. (2973) **Additional proof of solvency — revocation of order.** The division may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this act, and may at any time, upon notice to such employer of not less than ten (10) or more than twenty

(20) days, after and upon a full hearing, revoke any order or approval theretofore made.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2973, R. C. M. 1921; amd. Sec. 52, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" at the beginning of the section; and made minor changes in style.

92-905. (2974) **Requiring security of employer.** If the division finds that an employer does not have the financial responsibility for the payment of the compensation herein provided to be paid, which might reasonably be expected to be chargeable to the employer during the fiscal year to be covered by the permission, the division must require the employer, before granting to him permission, or before continuing or engaging in such employment, subject to the provisions of compensation plan No. 1, to give security for such payment, which security must be in such an amount as the division finds is reasonable and necessary to meet all liabilities of the employer, which may reasonably and ordinarily be expected to accrue during the fiscal year. The security must be deposited with the division, and may be a certain estimated per cent of the employer's last preceding annual payroll, or a certain per cent of the established amount of his annual payroll for the fiscal year or the security may be in the form of a bond or undertaking executed to the division in the amount to be fixed by it with two (2) or more sufficient sureties, which undertaking must be conditioned that the employer will well and truly pay, or cause to be paid, all sums and amounts for which the employer shall become liable under the terms of this act to his employees during the fiscal year; or such security may consist of any state, county, municipal, or school district bonds, or the bonds or evidence of indebtedness of any individuals or corporations which the division deems solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the division as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities, or any remaining part thereof, shall be returned to the depositor. The division is liable for the value and safekeeping of all such deposits or securities, and shall, at any time, upon demand of a bondsman or the depositor account for the same, and the earnings thereof.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2974, R. C. M. 1921; amd. Sec. 53, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "industrial accident board," "board," or "treasurer of the board" throughout the section; and made minor changes in phraseology and style.

92-906. (2975) **Failure of employer to pay compensation—duty of division.** Upon the failure of the employer to pay any compensation provided for in this act, upon the terms and in the amounts and at the times when the same become due and payable, the division shall, upon demand of the person to whom compensation is due, apply any deposits made with the division to the payment of the same, and the division shall take the proper steps to convert any securities on deposit with the

division, or sufficient thereof, into cash and to pay the same upon the liabilities of the employer, accruing under the terms of this act, and the division shall when necessary, collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the employer to ensure the payment of his liability. And to these ends, and for these purposes, the division shall be deemed to be the owner of the deposit and security and the obligee in the bond in trust for the purposes, and may proceed in its own name to recover upon the bonds, or foreclose and liquidate the securities.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2975, R. C. M. 1921; amd. Sec. 54, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "state accident board" or "board" throughout the section; and made minor changes in phraseology.

92-907. (2976) **When employer to make deposit or security to guarantee payment of compensation.** Within thirty (30) days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the division for the protection and guaranty of the payment of such liability, in such sum as the division may direct. However, if sufficient securities are already on deposit with the division, or if the division determines that the employer has sufficient financial responsibility to meet the liability of the employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2976, R. C. M. 1921; amd. Sec. 55, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" or "treasurer of the board" throughout the section; and made minor changes in phraseology and style.

92-908. (2977) **When employer may be relieved from liability.** Any employer against whom liability may exist for compensation under this act, may, with the approval of the division, be relieved therefrom by:

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per cent per annum, with the division; or,

(2) Purchasing an annuity within the limitations provided by law, in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the division.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2977, R. C. M. 1921; amd. Sec. 56, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" or "treasurer of the board" throughout the section; and made minor changes in phraseology and punctuation.

Reduction of Benefits by Compensation Amount

The employer's obligation as a Plan I self-insurer is neither increased nor diminished by the group disability policy, and the reduction of benefits under the policy by the amount of compensation paid under the act is proper to prevent duplication of wage-loss benefits and does not alter the employer's obligation. Carlson v. Anaconda Co., — M —, 529 P 2d 356.

CHAPTER 10—COMPENSATION PLAN NO. 2

Section 92-1002. Duty of employer electing plan No. 2—amount of insurance necessary.
92-1004. Agreement to be contained in policies of insurance—deposit of bonds.
92-1005. Policies made subject to this act.
92-1007. Deposits by insurer with division.
92-1008. How insurer relieved from liability.
92-1010. Report of insurance companies to division.

92-1002. (2979) **Duty of employer electing plan No. 2—amount of insurance necessary.** (1) Any employer electing to become bound by compensation plan No. 2 shall make his election on the form and in the manner prescribed by the division.

(2) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the division the notice of coverage stating the effective date of the policy insuring the employer and such other information as may be required by the division. The policy remains in effect until cancelled, and cancellation may take effect only by written notice to the named insured and to the division at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this subsection prevents an insurer from cancelling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

(3) The division may, in its discretion, assess a penalty of no more than $200 against an insurer which as a general business practice does not comply with the 30-day notice requirement as set forth in subsection (2) of this section.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R. C. M. 1921; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section.

The 1977 amendment designated the former first sentence as subsection (1); deleted a former second sentence reading "Such election shall be accompanied by a certificate issued by the insurer on the form prescribed by the division, which shall state the effective date of the policy insuring the employer, its expiration date and such other information as may be required by the division to inform the division of the adequacy of the insurance"; and added subsections (2) and (3).

Repealing Clause

Section 2 of Ch. 324, Laws 1977 read "Sections 92-1006 and 92-1009, R. C. M. 1947, are repealed."

References

Meyer v. Noble Drilling, Inc., 259 F Supp 110, 115.

92-1004. (2981) **Agreement to be contained in policies of insurance—deposit of bonds.** No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this act provided for, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy or by this act or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation. Before issuance of any policy

by an insurer as herein authorized, such insurer must deposit with the division, bonds of the United States or the state of Montana, or of any school district, county, city or town in the state of Montana, or a corporate surety bond made out to and approved by the division, in an amount not less than five thousand dollars ($5,000.00) or more than one hundred thousand dollars ($100,000), as the division may determine. If any insurer fails to discharge any liability after the amount thereof shall be determined by the division, and within the time limited by the division, the division shall convert the bonds, or such part thereof as is necessary, into cash, and from the proceeds liquidate such liability; and thereafter the insurer must make an additional deposit to meet any deficiency caused thereby. It is intended hereby to give the division the discretion in the matter of whether an insurer has failed to discharge any liability.

History: En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R. C. M. 1921; amd. Sec. 11, Ch. 177, L. 1929; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975.

Amendments

The 1971 amendment inserted the clause relating to corporate surety bonds in the third sentence; and increased the maximum deposit under the third sentence from $20,000 to $100,000.

The 1975 amendment substituted "division" for "treasurer of the industrial accident board," "board" or "industrial accident board" throughout the section; and made minor changes in phraseology.

Cross-References

Policy to provide for freedom of choice of professional practitioner, sec. 40-4108.

92-1005. (2982) **Policies made subject to this act.** Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its forms have been approved by the division, and as otherwise provided by law.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2982, R. C. M. 1921; amd. Sec. 1, Ch. 217, L. 1951; amd. Sec. 5, Ch. 176, L. 1957; amd. Sec. 1, Ch. 203, L. 1959; amd. Sec. 170, Ch. 147, L. 1963; amd. Sec. 1, Ch. 142, L. 1971; amd. Sec. 59, Ch. 23, L. 1975; amd. Sec. 3, Ch. 318, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 23 and once by Ch. 318. Both amendments substituted the reference to "division" for "board" and the amendment by Ch. 318 deleted a second paragraph as set forth in the following amendment note.

Amendments

The 1971 amendment increased the minimum assessment specified in the second sentence of the former second paragraph from $10 to $200.

Chapter 23, Laws of 1975, substituted "division" for "board" throughout the section; deleted "shall" before "have been approved by" in the second sentence; and made other minor changes in phraseology in the paragraph deleted by Ch. 318, Laws of 1975.

Chapter 318, Laws of 1975, substituted the reference to "division" for "board"; and deleted a second paragraph which read: "On or before the first day of July of each year, the board shall assess and each insurer shall pay to the board not to exceed three and one fourths per cent (3¼%) of its gross annual direct premiums collected in Montana on policies of insurance insuring employers who elected to become bound by the compensation plan No. 2 during the previous calendar year, less return premiums. No such assessment shall be less than two hundred dollars ($200). The treasurer of the board shall pay the amounts so collected into the state treasury. Payments by such insurers under this section shall be considered as items of loss for rate-making purposes."

92-1006. (2983) **Repealed.**

Repeal

Section 92-1006 (Sec. 35, Ch. 96, L. 1915; Sec. 3, Ch. 49, L. 1961; Sec. 60, Ch. 23, L. 1975), relating to certification of renewal of insurance policies to the division, was repealed by Sec. 2, Ch. 324, Laws 1977.

92-1007. (2984) Deposits by insurer with division. Within thirty (30) days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the division for the protection and guarantee of the payment of such liability in such sum as the division may direct. However, if the division deems the amount on deposit by the insurer under the provisions of section 92-1004 sufficient to cover all liabilities of the insurer, then no further deposit shall be required.

History: En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 11, Ch. 100, L. 1919; re-en. Sec. 2984, R. C. M. 1921; amd. Sec. 61, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "treasurer of the board" or "board" throughout the section; and made minor changes in phraseology, punctuation and style.

92-1008. (2985) How insurer relieved from liability. Any insurer against whom liability may exist for compensation under this act, may, with the approval of the division, be relieved therefrom by:

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per cent per annum, with the division; or,

(2) By purchasing an annuity within the limitations provided by law in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the division.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2985, R. C. M. 1921; amd. Sec. 62, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" or "treasurer of the board" throughout the section; and made minor changes in phraseology and punctuation.

92-1009. (2986) **Repealed.**

Repeal

Section 92-1009 (Sec. 35, Ch. 96, L. 1915; Sec. 63, Ch. 23, L. 1975), relating to notice required for cancellation of insurance policies, was repealed by Sec. 2, Ch. 324, Laws 1977.

92-1010. (2987) Report of insurance companies to division. Every insurance company transacting business under this act shall, at the time and in the manner prescribed by the division, make and file with the division such reports of accidents as the division may require.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2987, R. C. M. 1921; amd. Sec. 64, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section.

CHAPTER 11—COMPENSATION PLAN NO. 3

Section 92-1101. What necessary in electing plan No. 3—percentage of payroll to be paid under plan.
92-1103. Manner of electing—contract or policy of insurance—payment of premium.
92-1104. Classifications by division.
92-1105. Intent and purpose of plan No. 3.
92-1105.1. Advanced rate for dangerous places of employment.
92-1108. In case of default, rates to be advanced twenty-five per cent (25%).
92-1110. Surplus in industrial insurance account.
92-1112. Investment of reserve—payment of installments.
92-1113. Division to keep accounts of segregations.
92-1114. Collection in case of default by employer—cancellation of right to operate under plan No. 3 for failure to pay premium.
92-1115. Injury happening while employer is in default.
92-1117. Prosecution or settlement of cause of action.
92-1118. Application for compensation under plan No. 3.
92-1119. Payment of physician.
92-1120. Application in case of death.
92-1121. What included in computing compensation in employment.
92-1122. Disbursements out of industrial accident account—employer to pay warrant.
92-1123. Earnings and interest on deposits.

92-1101. (2990) **What necessary in electing plan No. 3—percentage of payroll to be paid under plan.**

COMPENSATION PLAN NUMBER THREE

Every employer subject to the provisions of compensation plan No. 3 shall at the times and in the manner prescribed by the division, pay to the division a premium based on a percentage of his payroll as determined by the division which shall be a member of a rating organization in accordance with the provisions of this act.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2990, R. C. M. 1921; amd. Sec. 1, Ch. 123, L. 1957; amd. Sec. 175, Ch. 147, L. 1963; amd. Sec. 1, Ch. 233, L. 1969; amd. Sec. 20, Ch. 329, L. 1969; amd. Sec. 65, Ch. 23, L. 1975.

Amendments

Chapter 233, Laws of 1969, substituted "at the times and in the manner prescribed by the industrial accident board" for "in the manner herein specified."

Chapter 329, Laws of 1969, inserted "which shall be a member of a rating organization."

The 1975 amendment substituted "division" for "industrial accident board" throughout the section.

92-1102. (2990.1) **Repealed.**

Repeal

Section 92-1102 (Sec. 17, Ch. 121, L. 1925; Sec. 177, Ch. 147, L. 1963; Sec. 4, Ch. 443, L. 1973; Sec. 66, Ch. 23, L. 1975), relating to employers' compliance and employees' elections under this act, was repealed by Sec. 9, Ch. 550, Laws 1977.

92-1103. (2991) **Manner of electing—contract or policy of insurance—payment of premium.** The division shall prescribe the procedure by which employers may elect to be bound by compensation plan No. 3, the effective time of such election and the manner in which such election is terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 shall receive from the division a contract or policy of insurance in a form approved

by the division. The premium thereon shall be paid by the employer, to the division at such times as the division shall prescribe and shall be paid over by the division to the state treasurer to the credit of the industrial insurance account in the agency fund.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921; re-en. Sec. 2991, R. C. M. 1921; amd. Sec. 2, Ch. 123, L. 1957; amd. Sec. 178, Ch. 147, L. 1963; amd. Sec. 2, Ch. 233, L. 1969; amd. Sec. 67, Ch. 23, L. 1975.

Amendments

The 1969 amendment inserted the present first sentence.

The 1975 amendment substituted "division" for "industrial accident board" or "board" throughout the section.

Repealing Clause

Section 3 of Ch. 233, Laws 1969 read "Sections 92-1106 and 92-1107, R. C. M. 1947, are repealed."

Cross-References

Policy to provide for freedom of choice of professional practitioner, sec. 40-4108.

92-1104. (2992) **Classifications by division.** The division is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience, and as [a] member of a rating organization as is otherwise provided for in this code, may be necessary or expedient, provided that no change in the classification or rates prescribed shall be effective until thirty (30) days after the date of the order making such change.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2992, R. C. M. 1921; amd. Sec. 3, Ch. 123, L. 1957; amd. Sec. 21, Ch. 329, L. 1969; amd. Sec. 68, Ch. 23, L. 1975.

Compiler's Notes

The compiler has inserted the bracketed word "a" before "member" in this section to correct an apparent oversight.

Amendments

The 1969 amendment inserted "and as a member of a rating organization as is otherwise provided for in this code."

The 1975 amendment substituted "division" for "industrial accident board" at the beginning of the section.

Cross-References

Industrial accident board to be member of rating organization, sec. 40-5616.

92-1105. (2993) **Intent and purpose of plan No. 3.** (1) It is the intent and purpose of compensation plan No. 3 that each industry, trade, occupation or employment coming under the provisions of the plan shall be liable to pay for injuries happening to its employees coming under the provisions of the Workers' Compensation Act.

(2) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the fund, and securities acquired by or through use of money shall be deposited in the industrial insurance account in the agency fund.

(3) The industrial insurance program shall be neither more nor less than self-supporting. Employments affected by the provisions hereof shall be divided by the division as a member of a rating organization into classes, whose rates may be readjusted at such times as the division as a member of such rating organization may actuarially determine. Separate accounts shall be kept of the amounts collected and expended in each class for actuarially determining rates but for payment of compensation and dividends the industrial insurance account shall be one and indivisible. The division as a member of such rating organization shall determine the hazards of the different classes of occupations or industries

and fix the premiums therefor at the lowest rate consistent with maintenance of an actuarially sound industrial insurance fund, and the creation of actuarially sound surplus and reserves and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk, and shall utilize the experience and information afforded to it as a member of such rating organization.

(4) In addition compensation plan No. 3 shall use an experience rating system for employers enrolled under it. This system shall reward employers with a better than average safety record, penalize employers with a worse than average safety record, and may provide for premium volume discount.

(5) The division in fixing rates shall provide for the expenses of administering the industrial insurance account allowed by law, the disbursements on account of injuries and deaths of employees in each class, an actuarially sound catastrophe reserve, reserves actuarially determined to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the division as a member of such rating organization. The amounts of such reserves and surplus shall be as determined from time to time by the division to be adequate but not excessive for the purposes intended.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R. C. M. 1921; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 23 and once by Ch. 171. Both amendments substituted "division" for "board" throughout the section and since the other changes made by the acts do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment, in the second sentence of the third paragraph, inserted "as a member of a rating organization" after "board"; inserted "as a member of such rating organization" after "board" in the second and fourth sentences, and added "and shall take advantage * * * rating organization" to the fourth sentence; and added "as a member of such rating organization" to the last paragraph.

Chapter 23, Laws of 1975, inserted the subsection designations; substituted "division" for "board" throughout the section; substituted "Worker's" for "Workmen's" in subsection (1) and made a minor change in phraseology.

Chapter 171, Laws of 1975, substituted "division" for "board" throughout the section; inserted "actuarially" before "determine" and "determining" in subsection (3); substituted "an actuarially sound industrial insurance fund" for "a solvent industrial insurance fund" in subsection 3; inserted "actuarially sound" before "surplus and reserves" in subsection (3); substituted "shall utilize" for "shall take advantage of" before "the experience" in subsection (3); inserted subsection (4); substituted "actuarially sound" and "actuarially determined" for "adequate" in two places in subsection (5); and added the last sentence of subsection (5).

Separability Clause

Section 23 of Ch. 329, Laws 1969 read "The provisions of this act shall be severable; and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

92-1105.1. Advanced rate for dangerous places of employment. If by reason of poor or careless management, or otherwise, any place of employment is unduly dangerous in comparison with other like places of employment, and the employer operating the same has not complied with the safety provisions of the Montana Safety Act, and the employer is

under compensation plan number 3, the division, in addition to any other penalty provided, shall advance the rate upon such place of employment fifty (50) per cent. The advanced rate shall continue and be in force until the place of employment has ceased to be unduly dangerous in comparison with other like places of employment and the employer has obtained a certificate of the division.

History: En. 92-1105.1 by Sec. 28, Ch. 341, L. 1969; amd. Sec. 70, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section; and made minor changes in phraseology and punctuation.

92-1106, 92-1107. (2994, 2995) Repealed.

Repeal

Sections 92-1106 and 92-1107 (Sec. 40, Ch. 96, L. 1915; Sec. 179, Ch. 147, L. 1963), relating to payments under compensation plan No. 3, were repealed by Sec. 3, Ch. 233, Laws 1969.

92-1108. (2996) **In case of default, rates to be advanced twenty-five per cent (25%).** Any employer who is in default in the observance of any order of the division, issued pursuant to the provisions of sections 92-1101 to 92-1105, inclusive, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five per cent (25%) over the established rate, and such advanced rate shall continue and be in force until the employer has ceased to be in default.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2996, R. C. M. 1921; amd. Sec. 4, Ch. 233, L. 1969; amd. Sec. 71, Ch. 23, L. 1975.

Amendments

The 1969 amendment substituted section "92-1105" for "92-1107."

The 1975 amendment substituted "division" for "board"; and made minor changes in phraseology.

92-1110. (2998) **Surplus in industrial insurance account.** If at the end of any fiscal year, there exists in the industrial insurance account in the agency fund an excess of assets over liabilities, and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the division may declare a dividend in such manner as the rules of the division may prescribe, to those employers who have paid premiums into the industrial insurance account in the agency fund in excess of liabilities chargeable to them in the account in the agency fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the division shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2998, R. C. M. 1921; amd. Sec. 6, Ch. 123, L. 1957; amd. Sec. 180, Ch. 147, L. 1963; amd. Sec. 72, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section; and made minor changes in phraseology.

92-1112. (3000) **Investment of reserve—payment of installments.** The division shall turn over the reserve to the board of investments to be invested and the same shall be invested by the board of investments as part of the long-term investment fund and out of the same and its earnings

shall be paid the monthly installments, and any lump sum, then or thereafter arranged for. However, when there is sufficient money in the industrial insurance account in the agency fund to meet such compensation payments, any surplus remaining may be invested as specified in this section.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 7, Ch. 196, L. 1921; re-en. Sec. 3000, R. C. M. 1921; amd. Sec. 17, Ch. 176, L. 1953; amd. Sec. 186, Ch. 147, L. 1963; amd. Sec. 73, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "treasurer of the board" at the beginning of the section; substituted "board of investments" for "state board of land commissioners" throughout the section; and made minor changes in phraseology and punctuation.

92-1113. (3001) **Division to keep accounts of segregations.** The division shall keep an accurate account of all such segregations of the industrial insurance account in the agency fund, and shall divert from the account any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3001, R. C. M. 1921; amd. Sec. 187, Ch. 147, L. 1963; amd. Sec. 74, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "treasurer of the board" at the beginning of the section; and deleted "upon direction of the board" before "shall divert from the account."

92-1114. (3002) **Collection in case of default by employer—cancellation of right to operate under plan No. 3 for failure to pay premium.** (1) If any employer under plan No. 3 shall default in any payment to the division, the sum due may be collected by an action at law in the name of the state and such right of action shall be cumulative. The division is hereby authorized in its discretion to cancel an employer's right to operate under plan No. 3 of the Workers' Compensation Act for failure to pay the premiums due. When the division makes an order canceling an employer's right for failure to pay premiums the division shall notify the employer of its intent to cancel the employer at least thirty (30) days before the cancellation becomes effective. After the cancellation date the employer shall have the same status as an employer who is not enrolled under the Workers' Compensation Act.

(2) When an employer's right to operate has been canceled by the division for failure to pay premiums and when the division, in its discretion finds that the property and assets of the employer are not sufficient to pay the premiums, the division may compromise the claim for premiums and accept a payment of an amount less than the total amount due.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R. C. M. 1921; amd. Sec. 1, Ch. 201, L. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 23, and once by Ch. 225. Changes made by Ch. 23 were included in the amendment made by Ch. 225. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 23, Laws of 1975, divided the section into subsections; substituted "division" for "industrial accident board" throughout the section; substituted "Workers'" for "Workmen's" throughout the section; and made minor changes in phraseology.

Chapter 225, Laws of 1975, substituted "the division shall notify the employer of its intent to cancel the employer" for "it shall be the duty of the industrial accident board to make such order" in the middle of subsection (1); deleted from the end of the third sentence of subsection (1) "and to send a formal notice to the sheriff or sheriffs of the county or counties where the employer is operating, and it shall be the duty of the said sheriff or sheriffs to post a notice in at least three (3) conspicuous places where the workmen can readily see said notices, to the effect that the industrial accident board has canceled the right of the said employer to operate under the act; and said notice shall give the date of the effectiveness of said order"; and made minor changes in phraseology and punctuation.

Effective Date

Section 2 of Ch. 225, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 3, 1975.

92-1115. (3003) **Injury happening while employer is in default.** For any injury happening to any of the employer's workers during default in any payment to the division, the defaulting employer as to such injury shall be considered as having elected not to come under the provisions of this act, except that he shall be and remain liable to pay to the division the amount of such default, together with the penalty prescribed by section 92-1108.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3003, R. C. M. 1921; amd. Sec. 182, Ch. 147, L. 1963; amd. Sec. 76, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "the employer's workers" for "his workmen"; and substituted "division" for "industrial accident board" in two places.

92-1117. (3005) **Prosecution or settlement of cause of action.** Any cause of action assigned to the state under the preceding section may be prosecuted or compromised by the division, in its discretion.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3005, R. C. M. 1921; amd. Sec. 77, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board."

92-1118. (3006) **Application for compensation under plan No. 3.** Where a worker is entitled to compensation under compensation plan No. 3, the worker shall file with the division an application therefor, together with the certificate of the physician who attended him, and it shall be the duty of such physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the division without charge to the workman. The filing of a certificate of the attending physician does not constitute a sworn claim for compensation.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3006, R. C. M. 1921; amd. Sec. 6, Ch. 213, L. 1945; amd. Sec. 78, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "worker" for "workman" at the beginning of the section; substituted "division" for "board" throughout the section; and made minor changes in phraseology and punctuation.

92-1119. (3007) **Payment of physician.** For a proper compliance with the provisions of the preceding section, the physician, after approval by

the division, shall be paid out of the division's administrative moneys in the earmarked revenue fund, one and one-half dollars ($1.50) for each case.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3007, R. C. M. 1921; amd. Sec. 171, Ch. 147, L. 1963; amd. Sec. 79, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted references to division for references to board throughout the section.

92-1120. (3008) Application in case of death. Where death results from the injury, the parties entitled to compensation under compensation plan No. 3, or someone in their behalf, shall make application for the same to the division. The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the rules of the division.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3008, R. C. M. 1921; amd. Sec. 80, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section.

92-1121. (3009) What included in computing compensation in employment. In computing the payroll, the entire compensation received by every workman employed under this act, shall be included, whether it be in the form of salary, wage, piecework, or otherwise, and whether payable in money, board or otherwise.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3009, R. C. M. 1921; amd. Sec. 11, Ch. 235, L. 1947; amd. Sec. 1, Ch. 146, L. 1971; amd. Sec. 5, Ch. 443, L. 1973.

Amendments

The 1971 amendment deleted a second sentence reading "Salary and wages paid during actual vacation period shall not be computed or assessed."

The 1973 amendment substituted "under this act" for "in the hazardous occupations enumerated in this act."

Repealing Clause

Section 6 of Ch. 443, Laws 1973 read "Sections 92-301 through 92-306 and 92-402 through 92-407, R. C. M. 1947, are repealed."

92-1121.1. Repealing clause—exception of persons hauling, etc.

Compiler's Notes

Section 92-202, referred to in the parent volume, was repealed by Sec. 2, Ch. 492, Laws of 1973.

92-1122. (3010) Disbursements out of industrial accident account—employer to pay warrant. Disbursements out of the industrial insurance account in the agency fund shall be made by the division. If at any time there is not sufficient money in the account with which to pay any warrants drawn thereon, the employer, on account of whose workers the warrant was drawn, shall pay the same, and upon his next contribution to the account he shall be credited with the amount so paid, with interest thereon at the rate of six per cent per annum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such account for the excess, and if the warrant is not paid for want of funds, it shall be credited to the employer and be applied upon succeeding assessments.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3010, R. C. M. 1921; amd. Sec. 184, Ch. 147, L. 1963; amd. Sec. 81, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "by the division" for "by the treasurer of the board as the board may order" in the first sentence; substituted "workers" for "workmen" in the middle of the section; and made minor changes in phraseology.

92-1123. (3011) **Earnings and interest on deposits.** All earnings made by the industrial insurance account in the agency fund by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of the account, and the making of profit, either directly or indirectly, by any person, out of the use of the account shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding two years, or a fine not exceeding five thousand dollars ($5,000.00), or both such fine and imprisonment.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3011, R. C. M. 1921; amd. Sec. 185, Ch. 147, L. 1963; amd. Sec. 82, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "by any person" for "by the treasurer of the board, or any other person" in the middle of the section; and deleted "and the treasurer of the board shall be liable upon his official bond for all profits realized for any unlawful use of the account" at the end of the section.

CHAPTER 12—SAFETY PROVISIONS

(Repealed—Sections 6 to 8, Chapter 176, Laws of 1957; Section 30, Chapter 341, Laws of 1969)

92-1201 to 92-1210. (3012 to 3021) **Repealed.**

Repeal

Sections 92-1201 to 92-1210 (Secs. 50, 51, Ch. 96, L. 1915), relating to safety provisions, were repealed by Sec. 30, Ch. 341, Laws 1969.

92-1214 to 92-1222. (3025 to 3033) **Repealed.**

Repeal

Sections 92-1214 to 92-1222 (Secs. 53, 54, Ch. 96, L. 1915), relating to safety provisions, were repealed by Sec. 30, Ch. 341, Laws 1969.

CHAPTER 13—OCCUPATIONAL DISEASE ACT

Section 92-1302. Administration of act.
92-1303.1. Definitions.
92-1304. Occupational disease.
92-1305. Proximate causation.
92-1310. Liability of last employer, exception.
92-1311. Payment of compensation—exceptions and limitations.
92-1312.1. Time when claims must be presented.
92-1314. Pulmonary specialist medical panel and pulmonary specialists.
92-1314.1. Procedure for medical examination.
92-1315. Standards for determining whether death or disability due to pneumoconiosis.
92-1315.1. Medical definition of totally disabling pneumoconiosis.
92-1315.2. Presumptions in determining whether death or disability due to pneumoconiosis.
92-1316. Where pulmonary occupational disease causes death.
92-1317. When occupational disease other than a pulmonary disease causes death.

92-1318. Autopsy.
92-1319. Periodic medical examinations.
92-1320. Payment of medical examination and autopsy expenses.
92-1321. Compensation benefits payable under this act.
92-1323. Prohibiting lump-sum settlements.
92-1324. Burial expenses.
92-1325. Medical and hospital expenses.
92-1330. Agreement by employee to waive compensation or to pay premium void—no liability in certain cases.
92-1334.1. Occupational disease coverage under compensation plans.
92-1335. Hearings, findings, and awards.
92-1337. Where payment due to child under eighteen years.
92-1339. Common-law defenses not available.
92-1340. Penalties for violation.
92-1343. Legal action by division.
92-1346. Claim forms prescribed by division.
92-1352. Powers of division.
92-1358. Books, records, and payrolls to be open to inspection.

92-1302. Administration of act. This act shall be administered by the division of workers' compensation.

History: En. Sec. 2, Ch. 155, L. 1959; amd. Sec. 188, Ch. 147, L. 1963; amd. Sec. 43, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "the division of workers' compensation" for "the industrial accident board of the state of Montana"; and deleted second and third sentences. For prior version, see parent volume.

92-1303. Repealed.

Repeal

Section 92-1303 (Sec. 3, Ch. 155, L. 1959; Sec. 1, Ch. 190, L. 1971; Sec. 44, Ch. 182, L. 1975; Sec. 46, Ch. 535, L. 1975), relating to definitions, was repealed by Sec. 26, Ch. 208, Laws 1977.

92-1303.1. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 92-413.

(2) "Child" is as defined in 92-417.

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing any work for remuneration or profit. "Silicosis", when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

(4) "Division" is as defined in 92-426.

(5) "Employer" is as defined in 92-410.1.

(6) "Employee" is as defined in 92-411.

(7) "Husband" is as defined in 92-425.

(8) "Independent contractor" is as defined in 92-438.1.

(9) "Insurer" is as defined in 92-435. The term includes an employer who is self-insured under compensation plan No. 1.

(10) "Invalid" is as defined in 92-416.

(11) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal

workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(12) "Order" is as defined in 92-429.

(13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO2), characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(14) "Wages" is as defined in 92-423.1.

(15) "Wife" is as defined in 92-424.

(16) "Year" is as defined in 92-433.

History: En. 92-1303.1 by Sec. 1, Ch. 208, L. 1977.

Title of Act

An act for the general clarification and revision of the Occupational Disease Act of Montana.

92-1304. Occupational disease. The term "occupational disease" shall mean all diseases arising out of or contracted from and in the course of employment.

History: En. Sec. 4, Ch. 155, L. 1959; amd. Sec. 1, Ch. 95, L. 1965; amd. Sec. 1, Ch. 41, L. 1971.

Amendments

The 1965 amendment added "asbestosis" to item 1.

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

Repealing Clause

Section 2 of Ch. 95, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Hydrocarbon Inhalation

Evidence was insufficient to sustain automobile mechanic's allegation that his exposure to concentration of diesel smoke resulted in his contracting emphysema or aggravating a pre-existing emphysema condition because of hydrocarbon inhalation. Aho v. Burkland Studs, Inc., 153 M 1, 452 P 2d 415.

92-1305. Proximate causation. Occupational diseases shall be deemed to arise out of the employment only if:

1. to 5. * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 155, L. 1959; amd. Sec. 1, Ch. 40, L. 1971.

Amendments

The 1971 amendment deleted from the introductory clause a reference to the preceding section.

92-1306. Repealed.

Repeal

Section 92-1306 (Sec. 6, Ch. 155, L. 1959), relating to the definition of "regularly employed," was repealed by Sec. 26, Ch. 208, Laws 1977.

92-1308. Right to compensation exclusive remedy.

Common-Law Remedy Denied

Defendant who was not eligible to receive compensation because of partial disability due to occupational disease could not pursue his common-law remedy against his employer. Dayton v. Boeing Co., 389 F Supp 433.

Proof of Claim

Determination by industrial accident board that workman was not entitled to

benefits for silicosis was not an exclusion of him from the act but was a finding he had not proved his claim; workman was not within class of employees "not eligible for compensation," as provided in section 92-1331, and could not sue employer for his alleged ailments. Anaconda Co. v. District Court, Second Judicial Dist., Silver Bow County, 161 M 318, 506 P 2d 81.

92-1309. Repealed.

Repeal

Section 92-1309 (Sec. 9, Ch. 155, L. 1959), relating to notice of employees' right to reject act, was repealed by Sec. 26, Ch. 208, Laws 1977.

92-1310. Liability of last employer, exception. Where compensation is payable for an occupational disease the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazard of such disease, but in the case of silicosis the only employer liable shall be the employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO_2) dust for a period of ninety (90) actual workshifts or more after July 1, 1958. Provided that in the case of pneumoconiosis any coal mine operator who has acquired a mine in the state or substantially all of the assets thereof, from a person who was an operator of such mine on or after December 30, 1969, is liable for, and must secure the payment of, all benefits which would have been payable by that person with respect to miners previously employed in such mine if acquisition had not occurred and that person had continued to operate such mine; and the prior operator of such mine shall not be relieved of any liability under this section.

History: En. Sec. 10, Ch. 155, L. 1959; amd. Sec. 2, Ch. 190, L. 1971.

Amendments

The 1971 amendment added the proviso relating to pneumoconiosis.

92-1311. Payment of compensation—exceptions and limitations. (1) When he has complied with other provisions of this chapter, compensation shall be paid to a claimant who becomes disabled by reason of occupational disease arising out of his employment, subject to the conditions set forth in this chapter.

(a) Except as provided for in this section, compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

(b) No compensation may be paid for a disease, other than silicosis or due to ionizing radiation, unless total disability results within 120 days from the last day upon which the employee actually worked for the employer against whom compensation is claimed. However, the division, upon good cause shown, may waive this limitation in the interest of justice, but in any case the period may not be extended to more than 1 year from the date of last employment by the employer.

(c) Except as provided for in subsection (1)(d) of this section, no compensation may be paid for silicosis unless during the 8 years immediately preceding the disablement the injured employee has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 1,000 workshifts in employment in this state and unless total

disability results within 4 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

(d) A silicotic employee who is discharged by his employer to escape liability for silicosis benefits under this chapter is eligible to receive compensation under this chapter when totally disabled if he has 700 actual workshifts since January 1, 1954, for that employer. When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when he ceases his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of a nondisabling occupational disease to continue in employment and he suffers wage loss by reason of the discharge, transfer, or cessation, the division may allow compensation on account thereof as it considers just, not exceeding $10,000.

(2) Compensation shall be paid to the beneficiaries of every employee covered by this chapter in cases where death results from an occupational disease arising out of his employment, subject to the following conditions:

(a) Except as provided for in subsection (1)(d) of this section, compensation may not be paid when the last day of injurious exposure of the employee to the hazards of the occupational diseases occurred prior to July 1, 1959.

(b) No compensation may be paid for death from silicosis unless during the 8 years immediately preceding the disablement the deceased employee has been exposed to harmful quantities of silicon dioxide dust for a period of not less than 1,000 workshifts in employment in this state.

(c) No compensation may be paid for death from silicosis unless the death results within 4 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from silicosis for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on file with the division. In such cases compensation shall be paid if death results within 7 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

(d) No compensation may be paid for death from any occupational disease, other than silicosis or due to ionizing radiation, unless death results within 1 year from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from an occupational disease, other than silicosis or ionizing radiation, for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on file with the division. In such cases compensation shall be paid if death results within 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

(3) Proof of the exposure to silicon dioxide dust for a period of not less than 1,200 workshifts in employment in this state, with proof of total

disability from silicosis, is prima facie evidence of exposure to harmful quantities of such dust during all such period.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977.

Amendments

The 1965 amendment inserted "or due to ionizing radiation" following "silicosis" in paragraphs A 2 and B 4.

The 1977 amendment redesignated subsections A to C as subsections (1) to (3); changed the subdivision designations from numbers to letters; deleted former subdivisions A5 and B5 containing identical provisions which forbade payment of a claim unless it was filed with the employer, his insurer or the board, in writing and under oath, within the time provided in 92-1312; substituted "division" for "board" throughout the section; increased the maximum compensation allowed in subdivision (1)(d) from $5,000 to $10,000; and made minor changes in phraseology, punctuation and style. For prior version, see 1965 amendment note and parent volume.

92-1312. Repealed.

Repeal

Section 92-1312 (Sec. 12, Ch. 155, L. 1959; Sec. 3, Ch. 190, L. 1971), relating to time for presenting claim, was repealed by Sec. 26, Ch. 208, Laws 1977.

92-1312.1. Time when claims must be presented. (1) When a claimant seeks benefits under this chapter, his claims for benefits must be presented in writing to the employer, the employer's insurer, or the division within 1 year from the date the claimant knew or should have known that his total disability condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, his claims for death benefits must be presented in writing to the employer, the employer's insurer, or the division within 1 year from the date the beneficiaries knew or should have known that the decedent's death was related to an occupational disease.

(2) The division may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, no claim to recover benefits under this chapter may be maintained unless the claim is properly filed within 3 years after the last day upon which the claimant or the deceased employee actually worked for the employer against whom compensation is claimed.

History: En. 92-1312.1 by Sec. 3, Ch. 208, L. 1977.

92-1313. Repealed.

Repeal

Section 92-1313 (Sec. 13, Ch. 155, L. 1959; Sec. 2, Ch. 92, L. 1965), relating to notice of disability or death, was repealed by Sec. 26, Ch. 208, Laws 1977.

92-1314. Pulmonary specialist medical panel and pulmonary specialists. (1) The Montana medical association may, at least annually, certify to the division as pulmonary specialists nominees three or more licensed

physicians of the state who shall have had at the time of certification at least 5 years' practice in the diagnosis, care, and treatment of diseases of the pulmonary tract and the interpretation of x-ray films thereof and may also certify to the division as occupational disease specialist nominees three or more licensed physicians of the state who have at the time of certification qualifications in the diagnosis, care, and treatment of nonpulmonary occupational diseases. From the two lists submitted as provided for in this section, the division shall appoint two separate medical panels. One panel is the pulmonary specialist medical panel and the other is the occupational disease medical panel. The division shall appoint from the list of pulmonary specialist nominees three or more physicians to serve on the pulmonary specialist medical panel. The division shall appoint from the list of occupational disease specialist nominees three or more physicians to serve on the occupational disease specialist medical panel.

(2) If the Montana medical association fails to submit the two lists of nominees as provided for in this section, the division shall appoint members to the medical panels by appointing to the pulmonary specialist medical panel three or more licensed physicians in the state of Montana who have had at the time of appointment at least 5 years' practice in the diagnosis, care, and treatment of diseases of the pulmonary tract and the interpretation of x-ray films thereof and by appointing to the occupational disease medical panel three or more licensed physicians of the state who have at the time of appointment qualifications to diagnose, care for, and treat nonpulmonary occupational diseases.

History: En. Sec. 14, Ch. 155, L. 1959; amd. Sec. 4, Ch. 208, L. 1977.

Amendments

The 1977 amendment completely rewrote this section. For prior version, see parent volume.

92-1314.1. Procedure for medical examination. (1) In order to determine the compensability of claims under this chapter based on pulmonary conditions, the following procedure shall be followed:

(a) The division shall direct the claimant to a pulmonary specialist who is a member of the pulmonary specialist medical panel for an examination. The pulmonary specialist shall conduct an examination to determine whether the claimant is totally disabled and is suffering from a pulmonary occupational disease. The pulmonary specialist shall submit a report of his findings to the division.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first pulmonary specialist, request that the claimant be examined by a second pulmonary specialist who shall be a member of the pulmonary specialist medical panel. If a second examination is requested, the division shall direct the claimant to a second pulmonary specialist and the pulmonary specialist shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from a pulmonary disease. The pulmonary specialist shall submit a report of his findings to the division. When a second examination has been requested, the reports of the examinations shall be submitted to the pulmonary specialist medical panel for its review. The panel shall issue

its report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the division shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician. If a second examination is requested, the division shall issue its order based on the report of the pulmonary specialist medical panel.

(2) In order to determine the compensability of claims under this chapter based on nonpulmonary conditions, the following procedure shall be followed:

(a) The division shall direct the claimant to an occupational disease specialist who is a member of the occupational disease medical panel for an examination. The specialist shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The specialist shall submit a report of his findings to the division.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first specialist, request that the claimant be examined by a second specialist. If a second examination is requested, the division shall direct the claimant to a second specialist who is a member of the occupational disease medical panel and the specialist shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from an occupational disease. The specialist shall submit a report of his findings to the division. When a second examination has been requested, the reports of the examinations shall be submitted to the occupational disease medical panel for its review. The panel shall issue its report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the division shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining specialist. If a second examination is requested, the division shall issue its order based on the report of the occupational disease medical panel.

(3) A report submitted to the division by the appropriate medical panel and placed in the division's records is prima facie evidence as to the matters contained in the report.

(4) Upon the division's own motion or if a claimant or an insurer requests that a hearing be held by the division prior to the time the division issues its final determination concerning the claimant's entitlement to occupational disease benefits, the division shall hold a hearing.

(5) At a hearing held before the division or the workers' compensation judge, the report of the medical panel and the two medical examinations conducted by members of the medical panel are exclusive and final and no other medical evidence or additional medical examinations are admissible. However, the physicians to which the claimant has been referred as provided for in this section may, in order to assist them in reaching their conclusion, consult with the claimant's attending physician.

(6) Within 20 days after the division has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a rehearing. In order to perfect an appeal to the workers' compensation judge, the appealing party must request a rehearing before the division. The division may grant a rehearing and, if a rehearing is granted, the division's final determination shall not be issued until after the rehearing. If the division does not grant a rehearing, the division's final determination is issued on the date the rehearing is denied.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977.

92-1315. Standards for determining whether death or disability due to pneumoconiosis. The standards for determining death or total disability due to pneumoconiosis are as follows:

(1) A miner is under a total disability due to pneumoconiosis if:

(a) he is unable to engage in any substantial gainful activity by reason of pneumoconiosis which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(b) the irrebuttable presumption established in 92-1315.2(3) applies.

(2) (a) Total disability may not be found for purposes of this section unless pneumoconiosis is the impairment involved. Whether or not pneumoconiosis in a particular case constitutes a disability as defined in subsection (1) of this section is determined from all the facts of that case. Primary consideration is given to the severity of the individual's pneumoconiosis. Except where other evidence rebuts a finding of disability (e.g., the individual is actually engaging in substantial gainful activity), medical considerations alone can justify a finding that the individual is under a disability where his impairment is one that meets the duration requirement in subsection (1)(a) of this section and is listed in the appendix to this subsection. However, the presumption established in 92-1315.2(3) applies.

(b) Pneumoconiosis may be found disabling if it does prevent the individual from engaging in any substantial gainful activity. The individual may be determined to be under a disability only if his pneumoconiosis is the primary reason for his inability to engage in substantial gainful activity. It must also be established that the individual has a respiratory impairment because of pneumoconiosis which is demonstrated on the basis of an MVV and FEV1 which are equal to or less than the values specified in the following table or by a medically equivalent test:

Height (Inches)	MVV(MBC) equal to or less than	and FEV_1 equal to or less than
	L./Min.	L.
57 or less	52	1.4
58	53	1.4
59	54	1.4
60	55	1.5
61	56	1.5
62	57	1.5
63	58	1.5
64	59	1.6
65	60	1.6
66	61	1.6
67	62	1.7
68	63	1.7
69	64	1.8
70	65	1.8
71	66	1.8
72	67	1.9
73 or more	68	1.9

(3) (a) A finding of the existence of pneumoconiosis may not be made in the absence of:

(i) a chest roentgenogram showing the existence of pneumoconiosis classified as category 1, 2, 3, A, B, or C, according to the international labor organization (1958), international labor organization (1968), or union internationale contra cancer/Cincinnati (1968) classifications of the pneumoconioses (if the chest roentgenogram is classified as category Z, it should be reclassified as category O or category 1 and only the latter accepted as evidence of pneumoconiosis);

(ii) an autopsy showing the existence of pneumoconiosis; or

(iii) a biopsy (other than a needle biopsy) showing the existence of pneumoconiosis. The biopsy is not expected to be performed for the sole purpose of diagnosing pneumoconiosis. Where a biopsy is performed for other purposes, however (e.g., in connection with a lung resection), the report thereof will be considered in determining the existence of pneumoconiosis.

(b) The roentgenogram, to conform to accepted medical standards, should represent a posterior-anterior view of the chest taken at a distance of 6 feet between the x-ray tube and the x-ray film on a 14 by 17 inch x-ray film.

(c) A report of autopsy or biopsy shall include a detailed gross (macroscopic) and microscopic description of the lungs or visualized portions of the lungs. If an operative procedure has been performed to obtain a portion of a lung, the evidence should include a copy of the operative note and the pathology report of the gross and microscopic examination of

the surgical specimen. If an autopsy has been performed, the evidence should include a complete copy of the autopsy report.

(4) (a) An individual's impairment shall be determined to be medically the equivalent of an impairment listed in the appendix to this subsection only if the medical findings with respect thereto are at least equivalent in severity and duration to the listed findings of the listed impairment.

(b) Any decision made under subsections (2)(a) and (6)(a) of this section as to whether an individual's impairment is medically the equivalent of an impairment listed in the appendix to this subsection shall be based on medical evidence demonstrated by medically acceptable clinical and laboratory diagnostic techniques, including a medical judgment furnished by one or more physicians designated by the division relative to the question of medical equivalence.

(c) Any decision as to whether a medical test is medically equivalent to the test described in subsection (2)(b) of this section shall be based on appropriate medical evidence, including a judgment furnished by one or more physicians designated by the division relative to the question of the medical equivalence of the test.

(5) A miner suffering or who has suffered from pneumoconiosis must submit the evidence necessary to establish that the pneumoconiosis arose out of employment in the coal mines. However, the presumption established in 92-1312.2(1) applies.

(6) The claimant must submit the evidence necessary to establish that the miner's death was due to pneumoconiosis and that the pneumoconiosis arose out of employment in coal mines. Death will be found due to a respirable disease when death is ascribed to a chronic dust disease or to another chronic disease of the lung. Death will not be found due to a respirable disease in those cases in which the disease reported does not suggest a reasonable possibility that death was in fact due to pneumoconiosis; e.g., cancer of the lung, disease due to trauma, or pulmonary emboli. However, the presumptions established in subsections (2) and (3) of 92-1315.2 apply.

History: En. Sec. 15, Ch. 155, L. 1959; amd. Sec. 4, Ch. 190, L. 1971; amd. Sec. 6, Ch. 208, L. 1977.

Amendments

The 1971 amendment inserted "or pneumoconiosis" after "other than silicosis" in the first paragraph of subdivision A 1; and added the present subsection B.

The 1977 amendment deleted provisions relating to procedure for medical examinations, now superseded by 92-1314.1; deleted provisions formerly preceding subdivision (1)(a) and substantially similar to 92-1315.2(3), except that the former provision added to the end of the text, "Provided, however, that any diagnosis made under this clause shall be in accordance with generally accepted medical procedures for diagnosing pneumoconiosis"; pursuant to these changes, eliminated former subsection (A); redesignated former subsection (B)(1) as subsection (1) and former subdivisions (B)(1)(b)(1) and (B)(1)(b)(2) as subdivisions (1)(a) and (1)(b); added the last sentence in subdivision (2)(a); redesignated the subdivisions under subsection (3)(a) with roman numerals; deleted from subsection (5) a provision substantially similar to 92-1315.2(1); deleted from subsection (6) provisions substantially similar to 92-1315.2(2); made extensive changes in phraseology, punctuation and style.

92-1315.1. Medical definition of totally disabling pneumoconiosis. A miner with pneumoconiosis, as evidenced in 3. of this part, plus one of

the following sets of medical specifications, may be found to be under a total disability, in the absence of evidence rebutting such finding:

(1) Airway obstruction demonstrated on spirogram by MVV and FEV_1 equal to or less than the values specified in the following table:

Height (Inches)	MVV(MBC) equal to or less than	and	FEV_1 equal to or less than
	L./Min.		L.
57 or less	32		1.0
58	33		1.0
59	34		1.0
60	35		1.1
61	36		1.1
62	37		1.1
63	38		1.1
64	39		1.2
65	40		1.2
66	41		1.2
67	42		1.3
68	43		1.3
69	44		1.3
70	45		1.4
71	46		1.4
72	47		1.4
73 or more	48		1.4

or

(2) Total vital capacity equal to or less than the values specified in the following table:

Height (Inches)	V.C. equal to or less than
	(L.)
57 or less	1.2
58	1.3
59	1.3
60	1.4
61	1.4
62	1.5
63	1.5
64	1.6
65	1.6

Height (Inches)	V.C. equal to or less than (L.)
66	1.7
67	1.7
68	1.8
69	1.8
70	1.9
71	1.9
72	2.0
73 or more	2.0

or

(3) Diffusing capacity of the lungs for carbon monoxide less than 6 ml./mm. Hg./min. (steady-state methods) or less than 9 ml./mm. Hg./min. (single-breath methods) or less than thirty per cent (30%) of predicted normal (all methods—actual value and predicted normal for the method used should be reported); or

(4) Arterial oxygen saturation at rest and simultaneously determined arterial p CO_2 equal to, or less than, the values specified in the following table:

Arterial p CO_2 and	Arterial O_2 saturation equal to or less than (%)
30 mm.Hg. or below	93
31 mm.Hg.	93
32 mm.Hg.	92
33 mm.Hg.	92
34 mm.Hg.	91
35 mm.Hg.	91
36 mm.Hg.	90
37 mm.Hg.	89
38 mm.Hg.	88
39 mm.Hg.	88
40 mm.Hg. or above	87

(5) Cor pulmonale with right-sided congestive failure as evidenced by peripheral edema and liver enlargement, with:

(A) Right ventricular enlargement or outflow tract prominence on X-ray or fluoroscopy; or

(B) ECG showing QRS duration less than 0.12 second and R of 5 mm. or more in V_1 and R/S of 1.0 or more in V_1 and transition zone (decreasing R/S) left of V_1; or

(6) Congestive heart failure with signs of vascular congestion such as hepatomegaly or peripheral or pulmonary edema, with:

(A) Cardio-thoracic ratio of fifty-five per cent (55%) or greater, or equivalent enlargement of the transverse diameter of the heart, as shown on teleroentgenogram (6-foot film); or

(B) Extension of the cardiac shadow (left ventricle) to the vertebral column on lateral chest roentgenogram and total of S in V_1 or V_2 and R in V_5 or V_6 of 35 mm. or more on ECG.

History: En. Sec. 5, Ch. 190, L. 1971.

Title of Act

An act to provide revisions to "The Occupational Disease Act of Montana" in compliance with the mandate of the Congress of the United States as required by the provisions of Public Law 91-173 of the Ninety-first Congress; and providing for the payment of benefits for total disability or death to a coal miner due to defined pneumoconiosis substantially to, or greater than, the amount of benefits prescribed by said public law and to prescribe standards and definitions for determining death or total disability due to pneumoconiosis, which are substantially equivalent to those established by said public law and regulations by the secretary of health, education and welfare; and providing for the submission of any claim for benefits within three years of discovery of total disability or death from said disease; and providing for the liability of prior and successor operators for all benefits for miners at such mine on or after December 30, 1969; amending section 92-1303, R. C. M., 1947, relating to definitions of disablement and pneumoconiosis; amending section 92-1310, R. C. M., 1947, relating to liability of last employer; amending section 92-1312, R. C. M., 1947, relating to time in which a claim may be presented; amending section 92-1315, R. C. M., 1947, relating to procedure for medical examination; amending section 92-1321, R. C. M., 1947, relating to compensation benefits payable under said act; and providing an appendix setting forth appropriate charts for determination of disability and providing standards for interpretation thereof; and providing an effective date.

92-1315.2. Presumptions in determining whether death or disability due to pneumoconiosis. In the event of death or disability due to pneumoconiosis, the following presumptions apply:

(1) If a miner who is suffering or who has suffered from pneumoconiosis was employed for 10 years or more in one or more coal mines, there is a rebuttable presumption that his pneumoconiosis arose out of that employment.

(2) If a miner was employed for 10 years or more in one or more coal mines and died from a respiratory disease, there is a rebuttable presumption that the death was due to pneumoconiosis.

(3) There is an irrebuttable presumption that the miner is totally disabled due to pneumoconiosis or that death was due to pneumoconiosis, as the case may be, if he is suffering or suffered from a chronic dust disease of the lung which:

(a) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the international classification of radiographs of the pneumoconioses by the international labor organization;

(b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or

(c) when diagnosis is made by other means, would be a condition which would reasonably be expected to yield results described in (a) or (b) above if diagnosis had been made in the manner prescribed in (a) or (b).

History: En. 92-1315.2 by Sec. 7, Ch. 208, L. 1977.

92-1316. Where pulmonary occupational disease causes death. Where a pulmonary occupational disease causes death and a claim for death

benefits is filed, the pulmonary specialists, or any one of them if the medical evidence be not controverted, shall examine all available evidence pertaining to the claim and shall make findings and thereupon report to the division. The report is prima facie evidence of fact as to the matters therein contained.

History: En. Sec. 16, Ch. 155, L. 1959; amd. Sec. 8, Ch. 208, L. 1977.

Amendments

The 1977 amendment substituted "a pulmonary occupational disease" for "silicosis" at the beginning of the first sentence; substituted "division" for "board" at the end of the first sentence; and made minor changes in phraseology.

92-1317. When occupational disease other than a pulmonary disease causes death. When an occupational disease, other than a pulmonary disease, causes death and a claim for death benefits is filed therefor, the division shall select at least two physicians who in the division's judgment could properly determine the condition regarding the decedent's death in relation to a possible occupational disease, and the physicians shall examine all availabe evidence pertaining to the claim and shall make findings and report to the division. The report is prima facie evidence of fact as to the matters therein contained.

History: En. Sec. 17, Ch. 155, L. 1959; amd. Sec. 9, Ch. 208, L. 1977.

Amendments

The 1977 amendment substituted "a pulmonary disease" for "silicosis" near the beginning of the section; substituted "the division shall select * * * and the physicians" for "a member of the 'medical committee'" in the first sentence; substituted "division" for "board" at the end of the first sentence; and made minor changes in phraseology.

92-1318. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease where an autopsy is necessary to determine the cause of death, an autopsy shall be ordered by the division. The autopsy shall be made under the supervision of the county coroner. The division may designate a duly licensed physician who is a specialist in such examinations to perform or attend the autopsies and to certify his findings thereon. The findings shall be examined by the physicians submitting reports under the provisions of 92-1316 and 92-1317 before the final reports under those sections are submitted to the division.

History: En. Sec. 18, Ch. 155, L. 1959; amd. Sec. 10, Ch. 208, L. 1977.

Amendments

The 1977 amendment substituted "division" for "board" throughout the section; substituted "by the physicians submitting reports under the provisions of 92-1316 and 92-1317 before the final reports under those sections are submitted to the division" at the end of the section for "by a member of the medical panel, and shall be on file with the board where it shall be a public record"; and made minor changes in phraseology and punctuation.

92-1319. Periodic medical examinations. (1) Upon the request of the division or the insurer, each employee entitled to compensation shall submit to a medical examination from time to time by a physician designated by the division who is a member of the appropriate medical panel. The examination shall be at a place reasonably convenient for the employee.

(2) The order directing the examination shall fix a time and place having regard to the convenience of the employee, his physical condition,

and his ability to attend. The employee and any other party in interest may have a physician present at the examination if the physician is provided and paid for by the employee or other party.

(3) If the employee refuses to submit to the examination or obstructs the examination, his right to compensation is suspended until the examination has been made, and no compensation is payable during or for the period of suspension.

(4) A physician who makes or is present at the examination may be required to testify as to the result thereof.

(5) The division may reduce or suspend the compensation of an employee who persists in unsanitary or injurious practices tending to imperil or retard his recovery, or who refuses to submit to such medical or surgical treatment as is reasonably essential to promote his recovery.

History: En. Sec. 19, Ch. 155, L. 1959; amd. Sec. 11, Ch. 208, L. 1977.

Amendments

The 1977 amendment substituted "division" for "board" throughout the section; and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

92-1320. Payment of medical examination and autopsy expenses. The expense of the first medical examination as provided in 92-1314.1 shall be borne by the insurer. The expense of a reexamination shall be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations, as provided in 92-1319 shall be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 92-1318, shall be borne by the party requesting the autopsy.

History: En. Sec. 20, Ch. 155, L. 1959; amd. Sec. 12, Ch. 208, L. 1977.

Amendments

The 1977 amendment substituted "92-1314.1" in the first sentence for "92-1315"; substituted "borne by the insurer" at the end of the first sentence for "borne by the employer if compensation is claimed under plan one, by the insurer if the claim is under plan two, and by the board if the claim is under plan three"; and made minor changes in phraseology and style.

92-1321. Compensation benefits payable under this act. The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease, or the beneficiaries and dependents of the employee in the case of death caused by an occupational disease, shall be entitled to under this act shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time, as is provided in cases of temporary total disability, permanent total disability and in cases of injuries causing death under the Workmen's Compensation Act of the state of Montana. Benefit payments for total disability or death due to pneumoconiosis shall, for the purpose of this act, be made as follows:

a. In the case of total disability of a miner due to pneumoconiosis the disabled miner shall be paid benefits during the disability at the rate of one hundred fifty-five dollars ($155) per month.

b. In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under this part, benefits shall be paid to the miner's

surviving spouse (if any) at the rate the deceased miner would receive such benefits if totally disabled.

c. In the case of an individual entitled to benefit payments under clause a. or b. who has one or more dependents, the benefit payments shall be increased at the rate of fifty per centum (50%) of such benefit payments, if such individual has one (1) dependent, seventy-five per centum (75%) if such individual has two (2) dependents, and one hundred per centum (100%) if such individual has three (3) or more dependents.

History: En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971; amd. Sec. 47, Ch. 535, L. 1975.

Amendments

The 1971 amendment added the last sentence, including the lettered subdivisions relating to pneumoconiosis, at the end of the section.

The 1975 amendment substituted "the beneficiaries and dependents of the employee" for "his beneficiaries and dependents" in the first sentence; substituted "shall be paid to the miner's surviving spouse" in subdivision b for "shall be paid to his widow"; and deleted "he were" before "totally disabled" at the end of subdivision b.

Repealing Clause

Section 7 of Ch. 190, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 8 of Ch. 190, Laws 1971 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 9 of Ch. 190, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

92-1322. No compensation for partial disability.

Common-Law Action Denied

Provisions of the Workmen's Compensation Act are exclusive, and therefore defendant who was not eligible to receive compensation because of partial disability due to occupational disease may not pursue his common-law remedy against his employer. Dayton v. Boeing Co., 389 F Supp 433.

92-1323. Prohibiting lump-sum settlements. (1) No final and binding award made upon any claim pursuant to this chapter may be converted into a lump-sum payment, in whole or in part, except as provided in this section. If a claimant has entered into a contract of employment with an attorney for the recovery of benefits under this chapter and the terms of the employment contract are reasonable, the amount of the attorney's fee may be ordered by the division to be paid by the insurer and thereafter deducted proportionately from weekly payments thereafter to be made to the claimant under this chapter. The division may require payments to be deducted each week in an amount it considers advisable from the payments thereafter to be made to the claimant under this chapter and paid to the attorney as they are so deducted from the weekly payments to the claimant.

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 92-1311(1)(d), a claimant and an insurer may enter into a full and final compromise settlement of the claim. However, no such settlements are binding on the parties until approved by the division. After the division approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released.

History: En. Sec. 23, Ch. 155, L. 1959; amd. Sec. 13, Ch. 208, L. 1977.

Amendments
The 1977 amendment rewrote this section. For prior version, see parent volume.

92-1324. Burial expenses. In addition to and separate and apart from any other compensation or benefit provided for in this chapter, there shall be paid in case of death of an employee, which death is the result of an occupational disease contracted in the course of employment, the reasonable burial expenses of the employee, not exceeding the maximum amount provided for in 92-705.

History: En. Sec. 24, Ch. 155, L. 1959; amd. Sec. 14, Ch. 208, L. 1977.

Amendments
The 1977 amendment substituted "the maximum amount provided for in 92-705" at the end of the section for "five hundred dollars ($500.00)"; and made a minor change in phraseology.

92-1325. Medical and hospital expenses. In addition to the compensation provided by this chapter, the following shall be furnished:

(1) If an employee becomes totally disabled from an occupational disease, he is entitled to receive, without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and such other treatment as may be approved by the division.

(2) An employee who suffers from an occupational disease as defined in 92-1304, but who is able to continue in employment while being treated therefor, is entitled to receive the medical services, treatments, and medicines reasonably required, not exceeding the value of $2,500.

History: En. Sec. 25, Ch. 155, L. 1959; amd. Sec. 15, Ch. 208, L. 1977.

Amendments
The 1977 amendment rewrote this section. For prior version, see parent volume.

92-1328. Repealed.

Repeal
Section 92-1328 (Sec. 28, Ch. 155, L. 1959), relating to willful conduct of employee precluding compensation, was repealed by Sec. 26, Ch. 208, Laws 1977.

92-1330. Agreement by employee to waive compensation or to pay premium void—no liability in certain cases. (1) An agreement by an employee to waive his rights to coverage under the Occupational Disease Act of Montana or to pay any portion of the premium paid by his employer is void.

(2) An employer may give, within 2 weeks of the beginning of employment, a physical examination to an applicant for employment. Where an applicant for employment, whether he has been formerly employed by the employer to whom application is made or not, though not actually disabled, is found upon competent medical and x-ray examination to be afflicted with an occupational disease, the employer is not liable under this chapter for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of the disease or diseases if a report of the medical examination is approved by the division as provided in this section.

(3) The report of the medical examination of the applicant for employment and x-rays, if any, shall be delivered to the division by the employer within 15 days after the examination. With the medical report and x-rays, if any, there shall be attached a certificate by the examining physician certifying that the medical report is the report of the physical examination of the applicant for employment.

(4) The division shall submit the medical report and x-rays, if any, to a physician of its choice and the physician shall report to the division his finding as to whether the medical report is satisfactory. The division shall within 20 days after the receipt of the medical report from the employer enter its order approving or disapproving the report and specifying the particular disease or diseases found. The order shall be in writing stating the reasons for the approval or disapproval. A copy of the order shall be mailed to the employer and the applicant for employment within 24 hours after the division has approved or disapproved the report.

(5) An applicant for employment may commence work prior to the approval or disapproval of the report by the division. However, if the division disapproves the report, the employer may discharge the applicant for employment without liability to him.

(6) If no physical examination is given to the applicant for employment within the 2-week period, the applicant for employment is fully eligible for the benefits under this chapter.

(7) The division may adopt reasonable rules relative to the form, execution, and filing of reports submitted under this section not inconsistent with the provisions of this chapter.

History: En. Sec. 30, Ch. 155, L. 1959; amd. Sec. 16, Ch. 208, L. 1977.

Amendments

The 1977 amendment rewrote this section. For prior version, see parent volume.

92-1331. Rights of suit at common law.

Common-Law Action Denied

Provisions of Workmen's Compensation Act are exclusive, and therefore defendant who is not eligible to receive compensation because of partial disability due to occupational disease could not pursue his remedy at common law against his employer. Dayton v. Boeing Co., 389 F Supp 433.

Proof of Claim

Determination by industrial accident board that workman was not entitled to benefits for silicosis was not an exclusion of him from the act but was a finding he had not proved his claim; workman was not within class of employees "not eligible for compensation" and could not sue employer for his alleged ailments. Anaconda Co. v. District Court, Second Judicial Dist., Silver Bow County, 161 M 318, 506 P 2d 81.

92-1334. Repealed.

Repeal

Section 92-1334 (Sec. 34, Ch. 155, L. 1959; Sec. 172, Ch. 147, L. 1963; Sec. 1, Ch. 88, L. 1974), relating to compensation plans, was repealed by Sec. 26, Ch. 208, Laws 1977.

92-1334.1. Occupational disease coverage under compensation plans. (1) Every employer enrolled under compensation plan No. 1 (Title 92, chapter 9), every insurer writing workers' compensation coverage under compensation plan No. 2 (Title 92, chapter 10), and the state compensation

insurance fund under compensation plan No. 3 (Title 92, chapter 11), all provided for under the Workers' Compensation Act, are considered to also provide full coverage for claims under the occupational disease act. Any policy of insurance for workers' compensation coverage under the Workers' Compensation Act written by a private insurance carrier or the state compensation insurance fund is considered to provide full occupational disease coverage under the provisions of Title 92, chapter 13.

(2) Except as provided in this chapter, the division shall apply the appropriate provisions of Title 92, chapters 9, 10, and 11, to the administration of the Occupational Disease Act of Montana in the same manner as they are applied to the administration of the Workers' Compensation Act.

(3) Under Compensation plan No. 3, any premiums and other receipts held by the division for occupational disease insurance coverage shall be transferred and become part of the workers' compensation industrial insurance account, and payments for occupational disease claims by the state fund shall be paid out of the industrial insurance account.

History: En. 92-1334.1 by Sec. 17, Ch. 208, L. 1977.

92-1335. Hearing, findings, and awards. Appeals from a final determination of the division shall be made to the workers' compensation judge. The judge, after a hearing held pursuant to 92-852, shall make a final determination concerning the claimant's claim. The judge may overrule the division only on the basis that the division's determination is:

(1) in violation of constitutional or statutory provisions;

(2) in excess of the statutory authority of the agency;

(3) made upon unlawful procedure;

(4) affected by other error of law;

(5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

History: En. Sec. 34, Ch. 155, L. 1959; amd. Sec. 172, Ch. 147, L. 1963; amd. Sec. 18, Ch. 208, L. 1977.

Amendments

The 1977 amendment completely rewrote the section. For prior version, see parent volume.

92-1336. Repealed.

Repeal

Section 92-1336 (Sec. 36, Ch. 155, L. 1959), relating to board determination of amount and manner of payment of compensation, was repealed by Sec. 26, Ch. 208, Laws 1977.

92-1337. Where payment due to child under eighteen years. Where payment is due to a child under 18 years of age or to a person adjudged incompetent, the payments shall be made to the parent or to the duly appointed conservator or guardian, as the case may be, and the payments acquit the insurer of further liability. In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative.

History: En. Sec. 37, Ch. 155, L. 1959; amd. Sec. 19, Ch. 208, L. 1977.

Amendments

The 1977 amendment inserted "conservator or" before "guardian" in the first sentence; substituted "payments" for "written receipt of such parent or guardian" in the first sentence; substituted "insurer" for "employer, the insurer or the board, as the case may be" in the first sentence; and made minor changes in style.

92-1339. Common-law defenses not available. Employers subject to and who fail to comply with the provisions of 92-1307 are not entitled to the benefits of this chapter during the period of noncompliance and are not entitled to invoke the defenses:

(1) that the employee was negligent, unless the negligence was willful;

(2) that the disability was caused by the negligence of a fellow employee; or

(3) that the employee had assumed the risks inherent, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

History: En. Sec. 39, Ch. 155, L. 1959; amd. Sec. 20, Ch. 208, L. 1977.

Amendments

The 1977 amendment substituted "92-1307" for "92-1334"; and made minor changes in phraseology, punctuation and style.

92-1340. Penalties for violation. An employer subject to this chapter who fails to comply with 92-1307 or a person who violates any other provision of this chapter is guilty of a misdemeanor punishable by a fine of no more than $500.

History: En. Sec. 40, Ch. 155, L. 1959; amd. Sec. 21, Ch. 208, L. 1977.

Amendments.

The 1977 amendment rewrote this section. For prior version, see parent volume.

92-1343. Legal action by division. Upon request of the division, the attorney general shall institute and prosecute actions for the enforcement of the provisions of this chapter or for any penalty provided for in this chapter. The attorney general shall prosecute or defend all actions brought by or against the division in its official capacity. The division may compromise any action brought under this chapter.

History: En. Sec. 43, Ch. 155, L. 1959; amd. Sec. 189, Ch. 147, L. 1963; amd. Sec. 22, Ch. 208, L. 1977.

Amendments

The 1977 amendment substituted "division" for "board" throughout the section; deleted "or for the recovery of money due the state occupational disease compensation account in the agency fund" after "for the enforcement of the provisions of this chapter"; and made minor changes in punctuation and phraseology.

92-1344. Repealed.

Repeal

Section 92-1344 (Sec. 44, Ch. 155, L. 1959), relating to actions by and against industrial accident board and service of process on the board, was repealed by Sec. 26, Ch. 208, Laws 1977.

92-1346. **Claim forms prescribed by division.** Claims for compensation under this chapter shall be filed on forms prescribed and provided for by the division and shall be filed in the same manner as claims for compensation under the Workers' Compensation Act unless otherwise provided in this chapter.

History: En. Sec. 46, Ch. 155, L. 1959; amd. Sec. 23, Ch. 208, L. 1977.

Amendments

The 1977 amendment substituted "division" for "board" throughout the section; substituted "Workers' Compensation Act" for "Workmen's Compensation Act"; and made minor changes in phraseology.

92-1347. Repealed.

Repeal

Section 92-1347 (Sec. 47, Ch. 155, L. 1959), relating to the powers of members of the industrial accident board or its appointed referees to administer oaths and perform necessary judicial acts, was repealed by Sec. 7, Ch. 537, Laws 1975.

92-1348. Repealed.

Repeal

Section 92-1348 (Sec. 48, Ch. 155, L. 1959), relating to use of confidential information, was repealed by Sec. 5, Ch. 25, Laws 1975.

92-1349. Repealed.

Repeal

Section 92-1349 (Sec. 49, Ch. 155, L. 1959), relating to mortality table used for estimating reserve requirements, was repealed by Sec. 26, Ch. 208, Laws 1977.

92-1350, 92-1351. Repealed.

Repeal

Sections 92-1350, 92-1351 (Secs. 50, 51, Ch. 155, L. 1959), relating to the technical rules for hearings, investigations, and the taking of depositions, were repealed by Sec. 7, Ch. 537, Laws 1975.

92-1352. **Powers of division.** The division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

History: En. Sec. 52, Ch. 155, L. 1959; amd. Sec. 24, Ch. 208, L. 1977.

Amendments

The 1977 amendment substituted "division" for "board" at the beginning of the section; and made a minor change in phraseology.

92-1353 to 92-1355. Repealed.

Repeal

Sections 92-1353 to 92-1355 (Secs. 53 to 55, Ch. 155, L. 1959), relating to the judicial powers of the industrial accident board, to court costs and fees, and to the production of testimony, were repealed by Sec. 7, Ch. 537, Laws 1975.

92-1356. Repealed.

Repeal

Section 92-1356 (Sec. 56, Ch. 155, L. 1959), relating to documentary evidence, was repealed by Sec. 26, Ch. 208, Laws 1977.

92-1357. Repealed.

Repeal

Section 92-1357 (Sec. 57, Ch. 155, L. 1959; Sec. 190, Ch. 147, L. 1963), relating to the apportionment of costs and expenses of a hearing among the parties, was repealed by Sec. 7, Ch. 537, Laws 1975.

92-1358. Books, records, and payrolls to be open to inspection. The books, records, and payrolls of the employer pertinent to the administration of this chapter shall always be open to inspection by the division or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of persons employed, and such other information as may be necessary for the division and its management under this chapter. Refusal on the part of the employer to submit the books, records, and payrolls for the inspection subjects the offending employer to a penalty of $100 for each offense, to be collected by civil action in the name of the state.

History: En. Sec. 58, Ch. 155, L. 1959; amd. Sec. 173, Ch. 147, L. 1963; amd. Sec. 25, Ch. 208, L. 1977.

Amendments

The 1977 amendment substituted "division" for "board" throughout the section; substituted "persons" for "men" near the middle of the section; and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 26 of Ch. 208, Laws 1977 read "Sections 92-1303, 92-1306, 92-1309, 92-1312, 92-1313, 92-1328, 92-1334, 92-1336, 92-1344, 92-1349, and 92-1356, R. C. M. 1947, are repealed."

92-1359 to 92-1365. Repealed.

Repeal

Sections 92-1259 to 92-1365 (Secs. 59 to 65, Ch. 155, L. 1959), relating to the jurisdiction of the industrial accident board; the legality of its rules, findings, and orders; and procedures for appeal, were repealed by Sec. 7, Ch. 537, Laws 1975.

CHAPTER 14—REHABILITATION OF INJURED WORKERS

Section 92-1401. Reference to vocational rehabilitation division of injured workers.
92-1402. Certification of determination to division—review of award.
92-1403. Expenses payable to workman receiving training.
92-1406. Industrial accident rehabilitation account.

92-1401. Reference to vocational rehabilitation division of injured workers. The division of workers' compensation shall refer to the department of social and rehabilitation services workers who have become permanently disabled as the result of injuries sustained within the scope and course of employment by an employer enrolled under the Workers' Compensation Act of the state of Montana and who in the opinion of the division can be vocationally rehabilitated. The department of social and rehabilitation services shall provide for the vocational rehabilitation of the injured workers under the provisions of Title 41, chapter 8, R. C. M. 1947.

History: En. Sec. 1, Ch. 21, L. 1961; amd. Sec. 1, Ch. 221, L. 1963; amd. Sec. 83, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "division of workers' compensation" and "division" for "industrial accident board of the state of Montana" and "board"; substituted "department of social and rehabilitation services" for references to the vocational rehabilitation division of the board of education of the state of Montana, in two places; substituted "workers"

for "workmen" in two places; substituted "Workers' Compensation Act" for "Workmen's Compensation Act"; and made minor changes in phraseology and punctuation.

92-1402. Certification of determination to division—review of award. When the department of social and rehabilitation services has provided all feasible vocational rehabilitation to an injured worker or has determined that vocational rehabilitation is not possible or feasible, it shall certify its determination to the division, at which time the division shall reconsider and review any previous award of compensation to the injured worker which is then in effect.

History: En. Sec. 2, Ch. 21, L. 1961; amd. Sec. 84, Ch. 23, L. 1975.

Amendments

The 1975 amendment substituted "department of social and rehabilitation services" for "vocational rehabilitation division"; substituted "worker" for "workman" in two places; substituted "division" for "industrial accident board" or "board" throughout the section; and made minor changes in phraseology.

92-1403. Expenses payable to workman receiving training. The eligibility of any injured workman to receive other benefits under the Workmen's Compensation Act of the state of Montana shall in no way be affected by his entrance upon a course of vocational rehabilitation as herein provided, but he may be paid, in addition thereto, upon the certification of the vocational rehabilitation division from funds herein provided, (1) his actual and necessary travel expenses from his place of residence to the place of training, and return, (2) his living expenses while in training in an amount not in excess of fifty dollars ($50) per week, his expenses for tuition, books and necessary equipment in training.

History: En. Sec. 3, Ch. 21, L. 1961; amd. Sec. 1, Ch. 363, L. 1971.

Amendments

The 1971 amendment, substituted "may" for "shall" before "be paid"; deleted "away from home" after "while in training"; and increased the weekly living expense allowance from $30 to $50.

92-1404. Repealed.

Repeal

Section 92-1404 (Sec. 4, Ch. 21, L. 1961), relating to use of masculine gender to include the feminine gender, was repealed by Sec. 88, Ch. 23, Laws 1975.

92-1406. Industrial accident rehabilitation account. (1) The payments provided in section 92-1403 shall be made from the industrial accident rehabilitation account in the agency fund. Payments to the account shall be made on or before July 1 of each year as follows:

(a) By each employer operating under the provisions of plan one of the Workers' Compensation Act, an amount to be assessed by the division, not exceeding one per cent (1%) of the compensation paid to the employer's injured employees in Montana for the preceding fiscal year.

(b) By each insurer insuring employers under the provisions of plan two of the Workers' Compensation Act an amount to be assessed by the

division, not exceeding one per cent (1%) of the compensation paid to injured employees of its insured in Montana during the preceding fiscal year.

(c) By the division an amount to be determined by the division, not exceeding one per cent (1%) of the compensation paid to injured employees in Montana from the industrial insurance account in the agency fund and the occupational disease account in the agency fund for the preceding fiscal year.

(2) Separate accounts of the amounts collected and disbursements made from the industrial accident rehabilitation account in the agency fund shall be kept for each of the plans. If in any fiscal year, the amount collected from the employers under any plan exceeds the amount of payments for employees of the employers under such plan, the assessment against the employers under such plan for the following year shall be reduced.

(3) The payments herein provided for shall be made to the division which shall credit the sums paid to the industrial accident rehabilitation account which shall be in the custody of the state treasurer. Disbursements from the account shall be made after approval by the department of social and rehabilitation services and upon audit and approval by the department of administration.

(4) No part of the funds allocated or contributed as herein provided and contemplated shall be used in payment of administrative expenses of the division or department of social and rehabilitation services.

History: En. Sec. 7, Ch. 21, L. 1961; amd. Sec. 3, Ch. 221, L. 1963; amd. Sec. 85, Ch. 23, L. 1975.

Amendments

The 1975 amendment inserted the subsection designations; redesignated former subdivisions (1) to (3) as subdivisions (1)(a) to (c); substituted "Workers' Compensation Act" for "Workmen's Compensation Act" throughout the section; substituted "division" for "industrial accident board" throughout the section; substituted "department of social and rehabilitation services" in subsections (3) and (4) for references to the division of vocational rehabilitation; substituted "department of administration" at the end of subsection (3) for "state controller and purchasing agent"; and made minor changes in phraseology.

DOES NOT
CIRCULATE

State Law Library Of Montana
KFM9030 1947 .A2
Revised codes of Montana, 1947, annotate
c. 1 Suppl 1977 84-92
3 0000 00035 9897